

**IN THE MATTER OF AN INDEPENDENT REVIEW PROCESS
BEFORE THE INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION**

AMAZON EU S.À.R.L.,

Claimant,

v.

INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS,

Respondent.

ICDR Case No. _____

FIRST WITNESS STATEMENT OF SCOTT HAYDEN

I, Scott Hayden, hereby affirm as follows:

1. I make this statement based on my personal involvement with and knowledge of the applications submitted by Amazon EU S.à.r.l. (together with its parent and affiliates, “Amazon”) to the Internet Corporation for Assigned Names and Numbers (“ICANN”) for approval to operate the .AMAZON new generic top-level domain (“gTLD”) and its equivalents in Chinese and Japanese characters (the “.AMAZON Applications”).

I. PROFESSIONAL AND BIOGRAPHICAL INFORMATION

2. I am Vice-President and Associate General Counsel for Intellectual Property of Amazon.com, Inc., and have held this position since 2006. In this role, I have responsibility for Amazon’s global portfolio of intellectual property, including patents, trademarks, domains, trade secrets, and gTLDs. Accordingly, I am responsible for all aspects of all our new gTLD applications, including application prosecution, strategic direction, and working closely with our business to advise, support, and partner on new gTLD initiatives. For our .AMAZON Applications, my responsibilities included brainstorming possible business use

case scenarios and opportunities to use the .AMAZON gTLDs, strategic business decisions about IP protection, planning sessions about opportunities and the application process, review and approval of those gTLD applications and the contracts with third-party service providers (such as Neustar and Iron Mountain); providing strategic direction, guidance, and advice on our communications to ICANN and the ICANN Governmental Advisory Committee (“GAC”), on our meetings with various representatives of governments, including of Brazil and Peru, on our response to the Independent Objector’s Community Objections (including our correspondence to ICANN regarding his conflict of interest), and our Request for Reconsideration and subsequent outreach to the ICANN Ombudsman; participating in meetings with representatives of the governments of Brazil and Peru and with senior ICANN staff members; and leading our participation in the Cooperative Engagement Process.

3. Before joining Amazon.com, Inc., I was Director of General Electric Company’s (“GE”) Global Patent Operation, where I oversaw GE’s domestic and international patent preparation and protection efforts (December 2004-April 2006). From April 2002-April 2005, I was Senior International Patent Counsel at General Electric Company, where I was responsible for GE’s international patent preparation and protection efforts. From November 2000-April 2002, I was General Counsel at GE Transportation Systems Global Signaling, where I led legal integration and restructuring of GE’s acquisition of Harmon Industries, Inc. From June 1999-November 2000, I was Senior Intellectual Property Counsel at GE-Harris Railway Electronics, where I was responsible for all intellectual property aspects of this fast-growing high technology division of GE. Before joining GE

in June 1999, I practiced intellectual property law at Armstrong Teasdale LLP in St. Louis, Missouri.

4. I have earned three degrees: a Juris Doctor from Saint Louis University School of Law, a Master of Business Administration in Finance and Management from Southern Illinois University, and a Bachelor of Science in Electrical Engineering from Purdue University.

II. THE .AMAZON APPLICATIONS

5. Through its retail websites, Amazon serves hundreds of millions of customers worldwide. Its websites are designed to enable millions of products and services to be sold by Amazon and third parties. In addition, for example, Amazon manufactures and sells electronic devices (*e.g.*, Kindle e-book readers, Fire TV sticks, and Echo voice controlled devices); serves developers and enterprises through Amazon Web Services; serves authors, independent publishers, musicians, filmmakers, and software application developers who publish and sell content in the Kindle Store or via other programs offered by Amazon; serves viewers of smart, bold, and innovative television series and movies through Amazon Studios; and serves customers who want predictable, fast, guaranteed, and unlimited shipping with our Prime express shipping membership program.
6. Amazon operates a globally successful e-commerce business through retail websites in over a dozen countries worldwide. Moreover, Amazon owns more than 24,000 second-level domain names containing the “AMAZON” brand, and uses several of them to highlight and direct customers to Amazon’s broad range of goods and services.¹

¹ Data about the AMAZON formative domains and trademarks will be submitted once an appropriate confidentiality arrangement is in place for this proceeding.

7. When the new gTLD program was announced, we recognized a vehicle to further our company mission of being “Earth’s most customer-centric company where people can find and discover everything they want to buy online.” We saw (and still see) the .AMAZON Applications as a significant opportunity to innovate on behalf of our customers. In particular, we recognized the business potential of possibly creating, under the .AMAZON gTLD umbrella, websites that could enhance and strengthen its service to our customers, including consumers, sellers, enterprises, and content creators. For example, with the .AMAZON gTLD, Amazon might create a single global entry point for its websites, or it might create a broader online ecosystem based on the security and customer-centricity that are synonymous with the AMAZON brand. We were (and are) excited because ICANN’s commitment to expand the Domain Name System to foster innovation and promote competition would enable our ability to develop innovative products and services on behalf of our customers. Of course, we also recognize the importance of safeguarding and supporting the globally recognized AMAZON brand and company name – a brand which is registered as a trademark more than 1,800 times in more than 170 countries.²
8. ICANN began accepting new gTLD applications in January 2012. Including the .AMAZON Applications, Amazon filed 76 gTLD applications. The Amazon legal department includes lawyers who are experienced with ICANN’s processes and with knowledge of gTLD-related issues. Together with various outside consultants and lawyers, we carefully studied the rules that ICANN had adopted for gTLD applications and carefully prepared each gTLD application before filing.

² Amazon’s AMAZON trademarks include its name and Amazon-formative marks such as amazon.com, the AMAZON Logo, 亚马逊, and アマゾン.

9. In submitting our applications, Amazon followed, and expected ICANN to follow, the procedures detailed in the New gTLD Applicant Guidebook (“AGB”). Based on the extensive process through which ICANN had developed the AGB (in which we participated through the Intellectual Property Constituency of the GNSO), we understood that the AGB contained the rules that applied to the current round of gTLD applications.
10. Amazon carefully followed the multi-stakeholder, community consultation process that resulted in the AGB and understood that the AGB constituted a definitive and exhaustive set of rules that we had to follow precisely. Based on all of the information that ICANN had disseminated through the AGB, we understood and expected that if we complied with the AGB’s requirements and processes, subject to the results of a formal objection or string contention, we would be awarded the right to operate registries for our applied-for gTLDs and would enter into corresponding registry agreements with ICANN.
11. Of all the gTLD applications we submitted, the .AMAZON Applications are obviously the most important to us. Amazon was born, grew up, and continues to operate on the Internet; for many years we used our famous domain name as a short-handed reference to our company. Our customers continue to refer to us by our famous domain name. The .AMAZON gTLDs not only represent our primary brand name and a vital part of our business identity and model, they are a logical extension of our corporate existence synonymous with our global corporate identity. We closely considered the AGB rules, including verifying that the name “Amazon” was not included in any of the ISO and other lists referenced in the AGB and did not fall within any of the AGB-defined “geographic name” categories. It was an easy decision to apply for .AMAZON and its IDN equivalents. This was particularly true because we anticipated many other companies, including those

that operate in the technology or retail sectors, would apply for gTLDs that corresponded to their primary corporate names and brands.

III. BRAZIL AND PERU’S OPPOSITION TO THE APPLICATIONS

12. Amazon submitted the .AMAZON Applications to ICANN on April 10, 2012. After the June 13, 2012 “Reveal Day” on which ICANN disclosed which gTLDs had been applied for and by whom, all gTLD applications – including the .AMAZON Applications – were subject to a public comment period and then an “Initial Evaluation” under the procedures set out in Section 1.1 of the AGB.
13. During the 60-day period in which the Applications were subject to public comment, as far as we are aware, no comments on the .AMAZON Applications were submitted to ICANN’s New gTLD Application Comments Forum (in stark contrast to other applications, which generated dozens or even hundreds of comments).³
14. The first signs of any opposition to the .AMAZON Applications came from the governments of Brazil and Peru through their ICANN GAC representatives. On November 20, 2012, the GAC representatives for Brazil and Peru issued a GAC Early Warning notice, stating that approving the .AMAZON application would interfere with efforts to protect the “Amazon biome” and possible future initiatives to “congregate web pages related to the population inhabiting that geographical region.” The Early Warning also stated that the .AMAZON string matched “part of the name, in English, of the ‘Amazon Cooperation Treaty Organization.’” The Early Warning only referred to the .AMAZON gTLD. It was silent about the Japanese and Chinese character applications.

³ See <https://gtldcomment.icann.org/comments-feedback/applicationcomment/viewcomments>.

15. The Early Warning came as a surprise to us. Since the founding of Amazon.com, Inc. in 1994, I am not aware of any complaints from either government that Amazon's operations, business model, or name have negatively impacted efforts to protect or promote the Amazonia region. Amazon has owned and used for many years the domain names <amazon.com>, <amazon.com.br>, <amazon.pe>, and <amazon.com.ar>, along with over 100 AMAZON-formative trademarks registered in South American countries. Yet, the Early Warning cited no evidence that the Amazonia Region has suffered any harm as a result of Amazon's 18 years (at the time of the Early Warning; now 20 years) of conducting business under the AMAZON name as well as at web addresses containing the AMAZON name. Similarly, the Early Warning did not explain how the loss of the ".com," ".com.br," or ".pe" (for example) from Amazon's current web identifiers would change the perception of global Internet users and negatively impact the "protection, promotion, and awareness raising on issues related to the Amazon biome." We have seen no evidence of this.
16. Regarding the Early Warning's reference to the Amazon Cooperation Treaty Organization, the organization's name in English did not strike us as a valid basis to object to the .AMAZON Application. Our research revealed that the organization is commonly referred to as "OTCA" – reflecting its name in Spanish and Portuguese – and hardly ever by its full name in English, or even its name in the organization's other official languages, which are as follows: in Portuguese (*i.e.*, Brazil's official language) as "Organização do Tratado do Cooperação Amazônica;" in Spanish (*i.e.*, the official language of Bolivia, Colombia, Ecuador, Peru, Venezuela) as "Organización de Tratado de Cooperación Amazónica"; and in Dutch (*i.e.*, Suriname's official language) as "De Organisatie van de Overrenkomst voor Amazonische Samenwerking."

17. Even so, we appreciated that concerns had been raised by two GAC member countries, and it was (and is) important to us as a global company that we engage positively with national governments.

IV. AMAZON'S DISCUSSIONS WITH BRAZIL AND PERU

18. Starting in February 2013 and continuing through November 2015, representatives from Amazon met or communicated with representatives of Brazil, Peru, or the OTCA on over a dozen occasions. I was involved, together with other colleagues, in high-level meetings and communications with representatives of the Brazilian and Peruvian governments, as well as, on at least one occasion, with senior ICANN executives. Some of the meetings were in fact facilitated by ICANN.
19. During these discussions, we made considerable efforts to reach an amicable solution that would allow .AMAZON to serve our customers and the interests of the Internet community, while addressing the concerns expressed by representatives of Brazil and Peru. But unfortunately, other than insisting that we withdraw the .AMAZON Applications or change the applied-for gTLDs, which the AGB would not have permitted, Brazil and Peru representatives refused to put forward any meaningful counterproposal or provide guidance as to what constituted an acceptable proposal. This prevented an amicable resolution.
20. Brazil and Peru's representatives stated that their position was supported by the GAC's 2007 Principles on New gTLDs that geographic names be protected and managed like country-code TLDs. In all of the discussions, this was the main thrust of their justification. But, my understanding is that ICANN specifically rejected this recommendation. I remember at least one meeting at the beginning of July 2013 (about a week before the ICANN meeting in Durban), in which the Brazilian and Peruvian government

representatives kept insisting that the .AMAZON gTLD should be designated as a geographic name, even though we had previously pointed out that under the AGB's rules the .AMAZON gTLD did not fall within the geographic name limitations or requirements. The concerns expressed by representatives of Brazil and Peru were basically that our use of the .AMAZON gTLDs would cause confusion between our company and the Amazonia region, as well as prevent the interests of the region from being promoted in an .AMAZON gTLD by the region's governments.

21. To address these concerns, we put forward a variety of proposals. For example, we committed to not oppose any future gTLD applications for the strings .AMAZONIA, .AMAZONICA, or .AMAZONAS, which are gTLDs that actually reflect the terms used to describe the geographic region in question by residents of that region. (AMAZONIA is the name of a Brazilian website dedicated to promoting the interests of the region – www.amazonia.org.br). In addition, we offered to block within .AMAZON gTLDs at the second level terms that represent governments and government organizations in the region and terms of specific cultural sensitivity; and to reserve certain domains within the .AMAZON gTLDs for re-direction to official websites of regional governments.
22. To underscore our willingness to address Brazil and Peru's concerns, we also submitted to ICANN a Public Interest Commitment ("PIC") binding us to what we had offered to do. Once accepted by ICANN, the PIC would have been incorporated into the Registry Agreement for each of the .AMAZON Applications. We also sent the PIC to the GAC.
23. Amazon's discussions with representatives of Brazil, Peru, and the OTCA continued through November 2015. Most recently, we suggested we could restrict culturally sensitive domains and a possible consultation on domain name registration and potentially co-

management/ownership of the registry. Brazil and Peru referred us to the OTCA to discuss these proposals, but OTCA never responded.

24. We made considerable attempts over a three-year period to reach a negotiated solution, because we hoped to find a mutually acceptable resolution. We did not make these offers out of concern that the objections of Brazil and Peru had any merit; throughout these negotiations we remained highly confident in our position that they did not. As with many business disputes, we simply preferred to attempt to negotiate a mutually agreeable resolution before seeking to enforce our rights through the AGB. We never intended to waive any of those rights, nor did we have any notice that attempting to negotiate a mutually acceptable resolution might be used against us.

V. THE GEOGRAPHIC NAMES EVALUATION

25. Following the AGB-mandated public comment period, ICANN conducted an Initial Evaluation of each .AMAZON Application, to determine if it met ICANN's technical, operational, and financial requirements to operate a gTLD registry.
26. ICANN issued Initial Evaluation Reports ("IERs") for each of the .AMAZON Applications. The IERs included a determination that the .AMAZON Applications are not geographic names as defined in AGB § 2.2.1.4.
27. On March 22, 2013, ICANN released the IER for the Japanese-character application, concluding that it passed each and every review factor, including "Geographic Names," and awarding the maximum achievable score of 41 points. Under the heading "Not a Geographic Name – Pass," the IER stated that "The Geographic Names Panel has determined that your application is consistent with the requirements in Section 2.2.1.4 of the Applicant Guidebook."

28. On April 5, 2013, ICANN released the IER for the Chinese-character application. That application also received the maximum score of 41 points; the IER stated that it did “not fall within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4.”
29. On May 17, 2013, ICANN released the IER for our .YAMAXUN application. (Yamaxun is “Amazon” in Chinese Pinyin.) That application also received the maximum score of 41 points; the IER stated that it did “not fall within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4.”⁴
30. On July 12, 2013, ICANN released the IER for .AMAZON in English. That application also received the maximum score of 41 points; the IER stated that it did “not fall within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4.”
31. Our .AMAZON Applications received the highest possible scores. The IER determinations confirmed our assessment that .AMAZON is not a geographic name, meaning that it was not prohibited and we did not need to obtain and submit to ICANN documentation of governmental support or non-objection. We felt confident we would be awarded the .AMAZON gTLDs consistent with the AGB. Nonetheless, we continued to negotiate with the representatives of the Brazilian and Peruvian governments in the hopes of reaching an expedited resolution to their objections.

⁴ The .YAMAXUN application was not the subject of any GAC advice. We signed the Registry Agreement with ICANN in December 2014, obtained from ICANN a Registry Code of Conduct exemption in September 2015, and the .YAMAXUN TLD was delegated on October 7, 2015.

VI. THE ICC EXPERT DETERMINATION

32. On March 12, 2013, the ICANN-appointed Independent Objector filed Community Objections against the .AMAZON Applications. We were struck by the fact that the Objection was largely based on Brazil and Peru's Early Warning.
33. At the time he filed the Objections against our .AMAZON Applications, the Independent Objector represented the Government of Peru before the International Court of Justice and, by his own admission, had "special links" to the Amazonia region. We repeatedly asked ICANN to set aside the Objections given the Independent Objector's clear conflict of interest and appoint a new Independent Objector without a conflict of interest. We never received a response from ICANN.
34. The International Chamber of Commerce's ("ICC") International Center for Expertise assigned a neutral expert to decide the Community Objections in accordance with the AGB requirements. On January 27, 2014, the ICC's expert dismissed the Community Objections and ruled in our favor. He found that the formal objection was meritless (because there was no evidence that the .AMAZON gTLD or the Chinese and Japanese character equivalents would harm the interests of the people of the Amazonia region). He also found that ICANN's Independent Objector had ties to Brazil and Peru that led "to justifiable doubts as to his independence." We viewed the ICC Expert's decision as also constituting an independent review and rejection of the grounds that Brazil and Peru had put forward in support of the Early Warning.

VII. BRAZIL AND PERU'S GAC CAMPAIGN

35. Even though we were engaged in discussions with Brazil and Peru in the wake of the Early Warning, representatives of both governments engaged in an aggressive campaign to persuade other governments participating in the GAC to support consensus advice to the ICANN Board against the .AMAZON Applications.
36. The GAC considered the .AMAZON Applications at its meetings in Beijing in April 2013. It is our understanding that, during this closed GAC meeting, Brazil and Peru tried to get the GAC to issue consensus advice against the Applications at the Beijing meeting, but the United States did not agree. This should have put an end to the issue because consensus advice was not reached. However, Brazil and Peru were able to achieve GAC advice that the applications should not proceed until after the ICANN meeting scheduled for July 2013 in Durban. The ICANN Board accepted this advice. We found this to be fundamentally unfair as the delay gave Brazil and Peru more time to campaign against the Applications.
37. Following the GAC's Durban meetings, the GAC's July 18, 2013 "Durban Communiqué" contained GAC consensus advice to the Board recommending that the .AMAZON Applications not be allowed to proceed. The Durban Communiqué merely stated that the "GAC has reached consensus on GAC Objection Advice" on the .AMAZON Applications. The GAC provided no reasons for the consensus advice. We had asked the GAC to grant us the opportunity to distribute to the GAC background materials about the .AMAZON Applications and the proposals we had made but the GAC Chair rejected our request. We later learned that Brazil and Peru had advocated aggressively for the consensus advice and had characterized the .AMAZON Applications as applications for geographic names requiring government support, but for which no support had been given by any affected

government. Such a characterization is incorrect, as ICANN's Geographic Names Panel had determined.

VIII. THE BOARD ACCEPTS THE GAC ADVICE

38. In our August 23, 2013 response to the GAC's advice, Amazon urged the ICANN Board to reject the GAC's advice.⁵ Among other things, we raised concerns that the GAC was treating "Amazon" as a geographic name, which contravened the AGB's rules, as well as accepted principles of national and international law embodied in ICANN's Bylaws and Articles of Incorporation.
39. On February 5, 2014, after months of inaction, the ICANN Board commissioned its own expert opinion. Amazon received the Board expert's opinion on April 7, 2014. Three aspects of the opinion seemed particularly troubling to us. First, we did not see why there was any need for the Board to commission its own expert opinion when an independent expert, appointed pursuant to the AGB's procedures, had ruled in our favor. Second, the report indicated that ICANN had limited the expert's scope of work to a purely intellectual property perspective instead of seeking a third party independent opinion on the issues and concerns raised by Amazon with regards to ICANN's obligations under its Bylaws and Articles of Incorporation. Third, the expert found that trademark law did not oblige ICANN to grant the strings to Amazon, a position that we had never advanced and thus was irrelevant to the determination that ICANN had to make on whether to allow the Applications to proceed or not. Our trademarks certainly gave us a legitimate basis to

⁵ In fact, Amazon asked to appear before the ICANN Board committee responsible for new gTLDs, the New gTLD Program Committee ("NGPC"), to provide information about its .AMAZON Applications, to respond to the GAC advice, and to answer any questions the NGPC may have about the .AMAZON Applications. ICANN denied all such requests.

apply for the .AMAZON gTLDs, but we have never claimed an entitlement to the gTLDs based solely on our trademarks.

40. However, we were pleased to see that the Board expert confirmed Amazon's position that (i) no country had "sovereign right" to the name "Amazon" under international law; and (ii) granting the .AMAZON Applications "would not . . . be prejudicial to the objecting states who, since they have no reason for linguistic reasons to reserve '.amazon', could always if they so wished reserve a new gTLD such as '.amazonia' or '.amazonas' which would create no risk of confusion with '.amazon'".
41. We also noted that the Board expert's findings were aligned with Amazon's PIC submitted to ICANN and the GAC as part of our efforts to accommodate Brazil's and Peru's concerns, by which Amazon offered to support any future application by Brazil, Peru, or the OTCA for the strings .AMAZONIA, .AMAZONAS, or .AMAZONICA as new gTLDs.
42. Thus, the findings by the Board's expert, once again, confirmed our expectation that the Board would allow the .AMAZON Applications to proceed. The Board's decision on May 14, 2014 to prohibit the .AMAZON Applications from proceeding came as a surprise to us. I fail to understand how the Board could rubber stamp GAC advice that was provided without any rationale; relying on a concern raised by only two governments in an Early Warning, which (compounding the unfairness of the situation) was inconsistent with both an expert determination under ICANN's own dispute resolution procedures and a third-party opinion commissioned by ICANN. I was also struck by the fact that the Board's decision fails to treat the .AMAZON Applications in accordance with the geographic names rules that were set out in very clear terms in the AGB to ensure transparency and predictability during the application process.

43. The ICANN Board’s decision is especially frustrating because it undermines a core value that we share with ICANN: the promotion of competition and innovation. Hundreds of other brand owners, including other companies that operate in the technology or retail sectors, will operate gTLDs consisting of their brand names. The ICANN Board denied Amazon, a company that was born on the Internet and whose business model is web-based, this same opportunity even though we were the only applicant for the .AMAZON gTLDs. Moreover, the ICANN Board’s decision to block our .AMAZON Applications threatens to deprive our customers of a unique online ecosystem shaped by Amazon’s customer obsession and passion for innovation. We followed the rules established by the community and ICANN; the ICANN Board did not and acted inconsistently with the Bylaws. Ultimately, the Internet community—and consumers worldwide—will bear the consequences of reduced competition and innovation (not to mention the increased politicization of Internet governance) if this decision is allowed to stand.

IX. THE BOARD’S CONFLICT OF INTEREST

44. I am also disappointed by the Board’s failure to be transparent and treat Amazon fairly during the Reconsideration Request process.
45. Under the Bylaws, Reconsideration Requests against the Board’s actions are to be considered by the Board Governance Committee (“BGC”), which makes a recommendation on the merits of the Reconsideration Requests to the Board.
46. ICANN’s Board is comprised of 16 members. All Board members who are not conflicted with respect to new gTLDs are eligible to participate in the New gTLD Program Committee (“NGPC”), which makes determinations on new gTLD applications. The NGPC members who determined that the .AMAZON Applications should not proceed were Cherine


Chalaby, Fadi Chehadé, Steve Crocker, Chris Disspain, Bill Graham, Olga Madruga-Forti, Gonzalo Navarro, George Sadowsky and Mike Silber. (NGPC members Bruno Lanvin, Erika Mann, Ray Plzak, and Kuo-Wei Wu did not participate.)

47. On May 29, 2014, Amazon filed a Reconsideration Request against this decision. On June 3, 2014, Amazon raised conflicts of interest concerns related to the Reconsideration Request process because the majority of the BGC members were also members of the NGPC and had made the determination subject to reconsideration. Amazon also pointed out that one of the two BGC members not involved in the decision subject to review was the backend registry provider of record for three of Amazon's applications (unrelated to the .AMAZON Applications). This left only one BGC member that neither had an apparent relationship to the parties nor had prior involvement in the NGPC decision. Accordingly, Amazon asked ICANN which BGC members would make a recommendation on the merits of the Request and to whom such recommendation would be addressed to (the full Board, the Board without the NGPC members who took part in the decision against the Applications, or the NGPC itself). ICANN never responded to Amazon's request.
48. On August 22, 2014, the following BGC members recommended that the NGPC deny the Reconsideration Request: Cherine Chalaby, Olga Madruga-Forti, Chris Disspain, and Mike Silber. We were struck by the fact that the same ICANN Board members who made the recommendation against the Reconsideration Request (as BGC members) were the same ICANN Board members who made the NGPC decision that was under review. I attach to this statement a table showing the composition of the NGPC and the BGC (Appendix A). To me, this is a clear conflict of interest.

49. On September 8, 2014, the NGPC accepted the BGC's recommendation and denied Amazon's Reconsideration Requests.
50. On February 6, 2015, members of the Amazon Legal Department met with ICANN's Ombudsman and asked that he consider whether the reconsideration process had been unfair in light of the fact that all members of the BGC that recommended that the Reconsideration Requests be denied had voted on the determination that was subject to reconsideration.
51. On May 28, 2015, the Ombudsman stated that the conflict of interest came "close to the need for a recommendation for a rehearing," but ultimately concluded after consulting with ICANN Legal staff that a rehearing would be unlikely to result in a different outcome given the applicable standards for reconsideration and an assurance from ICANN that the conflict of interest did not affect the result. The injustice of this treatment underscored the lack of procedural fairness and lack of transparency provided to Amazon by the Board during the Reconsideration Request process.
52. Amazon very strongly believes that it has been treated unfairly by ICANN and that ICANN did not treat the .AMAZON Applications fairly, objectively, neutrally, independently and according to the ICANN Articles, Bylaws and the AGB. We believe we complied with all of the AGB's rules. We passed the initial evaluations with flying colors. An independent expert found in our favor and made findings to which the ICANN Board should have deferred. Instead, the Board deferred to political pressure. In our view, by not abiding by the spirit and letter of the ICANN Articles, Bylaws and the AGB, the Board failed to act in the best interests of ICANN and the Internet community.

I affirm the foregoing as true and correct to the best of my knowledge.

Executed on February 29, 2016.

A handwritten signature in black ink, appearing to be 'SH', written over a horizontal line.

Scott Hayden