

A Proposal for Public Interest Closed Generic gTLDs (PICG TLDs)

Alan Greenberg
Kathy Kleiman
George Sadowsky
Greg Shatan

3 August 2020

1. Summary

This paper presents a method of implementing the use of new closed generic top level domains in the public interest within the DNS. It presumes the creation of a new type of gTLD, with a registry operator governed by a diversity of nonprofit “partners,” and which allocates domain space to initial and subsequent partners and other relevant entities, while the TLD is closed to the rest of the world. Incentives governing this new type of TLD would strongly inhibit acquisition and operation for significant financial gain, while strongly supporting the publication of robust and useful content to meet the public interest obligations implied by the string and set out in GAC advice. The paper explores implications of this approach for applicants, applications, review processes, the operation of the resulting TLD, and the public interest.

2. Background and Motivation

Through the work now being done in its Subsequent Procedures PDP Working Group, ICANN is preparing the basis for its next and subsequent rounds of applications to propose and operate new top level generic domains within the Domain Name System.

In the previous round of new gTLDs, controversy existed regarding the acceptability of applications to establish new gTLDs based upon generic strings that were “closed.” A closed TLD is one in which registration of second and further names in the TLD is completely controlled by the registry operating the TLD. Concern was expressed by the Governmental Advisory Committee (GAC) regarding the appropriateness of such TLDs unless they “serve a public interest goal.”¹ The ICANN Board took action to prevent the delegation of “closed generics” in the first round.² The Board action did not make permanent policy and in effect delayed the full resolution of the issue to a future round. We know that applicants seek a more predictable and certain environment for submitting

¹ GAC Advice, Beijing Communique, Annex 1, Category 2, Section 2, <https://gac.icann.org/contentMigrated/icann46-beijing-communique>

² <https://features.icann.org/gac-category-2-safeguard-advice-%E2%80%93-exclusive-generic-tlds>

their applications in future rounds of gTLDs. To that end, we share the following public interest framework.

3. Underlying Assumptions and Principles

In order to allow applications for public interest closed generic strings in line with Beijing GAC Advice, there is a critical need to be able to assess whether a given application in fact meets a defined need to serve a public interest goal. Once that is achieved, there is a similarly critical need to ensure that the nature of and intent of the TLD does not lose those attributes during its lifetime - either through business decisions of the registry or through a transfer of control of the registry.

ICANN has gained sufficient experience from its 20+ year stewardship of the DNS to understand the multiple ways in which its procedures have been gamed. It is our sense that the important actors within the community are highly likely to require that the purpose and use of public interest closed generic strings in the DNS be protected from deviating from its original goals. There must be a way for the applicant to convey its plans to ICANN, and for the public later to monitor the public interest closed generic TLD and the privileges (and responsibilities) with which it was delegated.

We therefore start with a set of principles regarding the purpose and use of public interest closed generic TLDs as guidance in formulating the specific requirements, positive and negative, that must guide such new registries. *We suggest that the following set of principles may be both necessary and sufficient for the community to feel comfortable that the status of such TLD remains true to its origin and serves a public interest purpose as required by the GAC advice.*

- 3.1. Trust.** A key characteristic that will allow public interest closed generic TLDs to meet their goals is encompassed in the word “TRUST”. The PICG TLD must be structured and operated so that it is THE trusted area of the internet in relation to its target subject matter.
- 3.2. Existing Commitment to the Public Interest.** The applicant for such a TLD should be comprised of or be governed by a group of organizations³ already involved in action and leadership related to the public interest issues being addressed by the TLD's name and purpose. Specifically, the initial applicant should be supported by a large enough representative subset of that group that can speak with some authority about the substance, importance, and legitimacy of the public interest issue and of their representativeness overall.
- 3.3. Fiscal Restraint.** The financial arrangements governing the operation of the PICG TLD should at most⁴ provide a reasonable operational return to the

³ We sometimes refer to these entities colloquially as “partners,” but this does not imply that their relationship will mimic a partnership or that the entity should be structured as a partnership.

⁴ It is possible that the TLD might be operated as a cost center (i.e., as a public service) with no attempt to directly offset costs.

activities of the TLD and should preclude the creation or retention of any windfall gains to the organization. This goal serves to orient the TLD's content, activities, and services to public service aspects rather than to any significant financial gain⁵.

3.4. Encourage Development of the TLD Consistent with its Purpose. The rules governing the development of the TLD should encourage those operating its 2nd level domains⁶ to provide the best, most relevant and most useful information, resources and services for its users and members of the public in this trusted area of the internet.

3.4.1. **Goal:** development of the TLD should be directed to substantive content and not to competitive structure or direct financial profit.

3.4.2. **Rationale:** The primary purpose will be to make available substantive content, information, and services. While competition among organizations is inevitable, the structure of the TLD will be designed to focus that competition on what is most important for the user: relevant, helpful, and useful content.

These principles above establish a framework that would engender a sufficient sense of trust in the integrity of the contents of the TLD, is capable of being approved by the GNSO Council and is very likely to be accepted by the ICANN Board and the GAC.

4. The Public Interest Closed Generic TLD: A New Class of gTLDs

This section outlines a public interest policy environment that would allow for closed generic TLDs to exist with appropriate controls to engender a high level of trust in the integrity of the contents of the TLD and serve the public interest goal set out by the GAC in its advice of the Beijing Communique.

4.1. Characteristics of the gTLD

We propose that a new category of gTLDs be created for public interest closed generic strings, much like the "community status" of certain applications in the first round. We have named this new category "Public Interest Closed Generic gTLDs" with the rather odd acronym (PICGS). To support this new category of TLDs, we specify appropriate rules that will enable these TLDs to operate within a public interest framework. The guidance for such operation is set out below.

⁵ This does not preclude fund-raising, which could be a substantive aim of some parts of the TLD, but which should not predominate.

⁶ Although the TLD is closed, it is expected that in many cases operation of specific second (and potentially lower) level domains will be delegated to and implemented by or on behalf of partners.

- 4.1.1. **Broader Public Interest:** PICG TLDs will serve the broader public interest, not just the interests of an individual organization. This is a critical aspect of the Beijing GAC Advice and the framework below works to bring these terms, and this concept, forward for review and approval of TLD applications, and ongoing review.
- 4.1.2. **Ongoing obligations:** The applicant's representations at application time will continue to be applied to the PICG TLD on an ongoing basis. The applicant will be held to its representations and they will be evaluated at renewal time. Much as a covenant to devote property to a public purpose "runs with the land,"⁷ representations made for a PICG TLD must continue should the applicant, later registry, choose to move on to other activities and they will bind those to whom the registry might be sold or transferred in the future.
- 4.1.3. The gTLD will, directly or through delegation, control the allocation of domain names at all levels of the TLD. The principles underlying the inclusion of PICG TLD domain names at the second level and beyond should be guided by the principles underlying the structure of the TLD and its governance principles as partially provided by this document.

4.2. The Applicant

- 4.2.1. The applicant must be either a not-for-profit (NFP) organization or an NFP entity comprising a group of NFP organizations. The preferred option is a group of NFPs or a single NFP with the explicit support of unrelated others, collectively comprising a notable part of the overall ecosystem involved in the topic covered by the proposed TLD.
- In unusual circumstances, a single NFP may apply without the explicit support of others, but only in which there are no other closely-related NFPs. The barrier to acceptance of such a PICG TLD application will be very high.
 - The term "not-for-profit" is used broadly, not narrowly, to include nongovernmental organizations, governmental and intergovernmental organizations, e.g., IGOs and INGOs. It may also include other agencies and organizations which operate without a profit motive.

⁷ A term in real estate referring to the rights and covenants in a real estate deed that remain with the land regardless of ownership. The rights are tied to the property (land) and not to the owner and move from deed to deed as the land is transferred from one owner to another.

- 4.2.2. The applicant must ensure that a critical mass of organizations involved in the subject are represented as partners supporting the application, i.e., the TLD must plan for substantive coverage in a balanced manner.
- 4.2.3. The applicant must set out a well-documented representation of its own expertise in the area of the PICG TLD and that of the other organizations who have partnered with it to submit the application.
- 4.2.4. The applicant expressly agrees to create a consortium, council or other communal body by which to bring its partnering organizations in this public interest space together for the governance of the PICG TLD, and provide the steps by which such a group will be convened in the application below.

4.3. The Application

- 4.3.1. The PICG TLD application requires:
 - a firm and detailed statement of purpose -- largely immutable -- that is associated with the TLD for its lifetime, regardless of ownership.
 - Clear analysis of the key question: Why is this string so important?
 - Statements of support from initial partnering organizations, a group which shall include a robust selection of not-for-profit organizations with a material interest in the subject and able to contribute to the PICG TLD for the public good.
 - A governance plan for the TLD, that will provide for decision making among participants responsible for second level domains within the TLD regarding governance matters, including new entrants to the TLD as well as for withdrawals (voluntary or involuntary) from the TLD. It must serve to ensure that the evolution of the participants in the TLD continue to represent its stated public interest purpose. Entrance to the TLD will be subject to the judgment of the existing governance structure, which should judge entry into and exit from the TLD on substantive merit in the context of its stated purpose.

4.4. The Application Review Process

- 4.4.1. Applicants must meet the same basic criteria, including financial, technical, and operational, as all other gTLD applicants.
- 4.4.2. **Public Interest Closed Generic Review Panel (PICGRP)**

- A group or committee will be established to evaluate whether each application meets the unique aspects and requirements of a PICG TLD.
- Members of the Panel must be well-versed in public interest and not-for-profit issues.

4.4.3. **Criteria for Review of Public Interest Applications**

- There are important questions to be answered during the review process. The questions to be answered on review include, but are not limited to:
 - Is the proposed string a valid label for a group of interests and activities that will meet a public service goal? Is there a public service test?
 - Is the governance model sufficiently diverse?
 - Does the applicant “cover” the content of the public interest space well?
 - Are organizations of merit in the public interest space being excluded against their wishes? The PICG TLD operator may not “monopolize” or control a TLD space in which other organizations and agencies have an active role and public interest representation.

4.4.4. Public Interest Closed Generic Review Panel Decision may issue one of two decisions:

- Approval: it agrees that the application appears to qualify as a PICG TLD and therefore merits consideration by the ICANN Board.
- Reject: the application does not qualify as a PICG TLD and therefore the TLD cannot move forward and is deemed to be withdrawn.
- The above notwithstanding, if the application is rejected by the PICGRP, the applicant has a single opportunity to revise the application and resubmit to the PICGRP.

4.4.5. Presumably, PICGRP decisions can be challenged/appealed as with other panels within the New gTLD process.

4.4.6. **Board Review and Approval of PICG TLD applications**

- Upon a decision of the PICGRP, the application will move forward to the ICANN Board.
- The ICANN Board will:
 - Solicit input on whether the Board should ratify the PICGRP recommendation, and
 - Upon receipt of any input, the Board will vote on whether to ratify the PICGRP recommendation. It will take a super-majority of the Board to ratify.
- Should the Board not ratify the PICGRP recommendation, the application cannot move forward and is deemed to be withdrawn.
- Should the Board approve the PICG TLD, then its Registry Agreement will include appropriate Specifications.

4.5. Management of the Registry Operator

- 4.5.1. In order to be accepted as a PICG TLD, the governance plan must ensure that the governance within the TLD is cooperative and supportive of attracting a large and useful compendium of information and services.
- 4.5.2. The TLD will have a governance structure/council that recognizes the applicant (then registry operator) as its leader,⁸ and consists of representatives of other not-for-profit organizations and agencies which play an operative role in the public interest space of the TLD.
- 4.5.3. Further, expansion and changes of the larger group of organizations, agencies, and experts participating in the TLD will be approved by the governance structure/council.
- 4.5.4. Additions and deletions to the governance structure/council and participant list, as well as any decisions regarding structural, behavioral, and content issues, are the responsibility of the governance structure/council that will develop its management charter.

4.6. Operation of the TLD

- 4.6.1. Revenue in general should be set at a level to cover costs and provide a reasonable rate of return for the administration of the TLD, at most.

⁸ This is intended to avoid gaming where a palatable “front-man” is the applicant but does not continue to take the lead role after the application is approved.

- 4.6.2. Should assets build up over time, they should be periodically withdrawn and dedicated to an external effort that is related to the public interest objective of the TLD in consultation with the TLD’s governance group.
- 4.6.3. The TLD must have prominent up-to-date webpages with clearly named domain names for:
- the detailed PICG TLD statement of purpose, discussion of the governance structure of the TLD, and members of the governing council (along with the council’s name-then-in-use), and
 - the up-to-date annotated index of second-level resources and guidance for those seeking materials related to the public interest goal of the TLD.
- 4.6.4. **Second Level Resources**
- PICG TLD second (and third) level domain names may be shared in their use and operation (depending on sub-structure). The structure, assignment and/or sharing, of PICG domain names will be created and overseen by the registry and its governance structure collectively.
 - The governance structure/council must allow for new participants to be added and removed to ensure that the PICGS TLD continues to represent the wider perspective of the public interest goal.

4.7. Renewal

- 4.7.1. When the initial term of the PICG TLD is due to expire, and the registry operator wishes to continue operating the PICG TLD, then the registry operator must demonstrate to ICANN that it has fulfilled the representations of its application, including:
- Registry operator continues to be a not-for-profit or collection of not-for-profit organizations (as broadly defined above).
 - Registry operator successfully brought together a critical mass of partnering organizations to form a governance structure to structure and operate the public interest space of the TLD.
 - Registry operator is operating the TLD in service of the public interest. Operation primarily to benefit the registry operator is not “serving the public interest,” even if the operator is a public interest entity. The TLD must continue to benefit the broader public interest.

- Registry operator will provide examples of how second level domains within the TLD are being used, as well as other uses of the TLD.
- For the avoidance of doubt, PICG TLD operators do not have a “presumption of renewal,” and must instead show the development of the TLD and its adherence to purpose. Renewal is dependent on a record of meeting original representations and ongoing service of the TLD to the public interest.
- If ICANN declines to renew the Registry Agreement with the current registry operator, then the governance group of that PICG TLD will be asked to provide a transition plan to a proposed registry operator that meets the required criteria for running this PICG TLD and agrees to the management and operational terms associated with the TLD.

4.8. Transfer, Exit, Termination

- 4.8.1. There are a number of ways in which the Registry Operator could cease to operate the TLD, such as:
- Sale or transfer to a new operator.
 - ICANN declines to renew the Registry Agreement.
 - The operating entity fails.
 - The operator determines that it no longer wants to operate the TLD.
 - The underlying public interest issue is resolved and no longer needed (e.g., a PICG TLD dedicated to fighting a disease which is then eradicated).
- 4.8.2. If the TLD is to change hands and move to another organization, the transfer must be judged on the basis of continuity of purpose.
- 4.8.3. If ownership of the TLD is ever transferred for consideration including financial compensation, the transfer price of the TLD will be limited to the original investment in the acquisition and operation of the TLD and a reasonable rate of return, taking relevant facts into account. This will help to ensure that public service, rather than financial gain, is the motivating factor for applying for the TLD.
- 4.8.4. ICANN’s registry transfer procedure, found in the Registry Agreement and explained at <https://www.icann.org/resources/change-of-control>, will be expanded to include financial limitations based on the above,

ensuring that there is no excessive return to ownership transfer, that the statement of purpose remains prominently unchanged, that recipient is also highly qualified in content dimension, and that there are no significant objections from existing partners in the governance structure.

4.8.5. **End of life TLD issues**

Due to the unique nature of this TLD, end of life issues will need to be carefully considered, such as the fate of second level domains, webpage content, email addresses, email accounts.

5. **Example: .earthquake**

DISCLAIMER: This section is merely an example and in no way presumes that this string would be an acceptable PICG TLD.

- 5.1. When you search for “earthquakes” in search engines, it is easy to find headline news: stories/videos about people hurt, buildings toppled, and crises underway. It is harder to find ways to prepare for an earthquake, to build earthquake proof buildings, and to prepare regional plans for earthquake response. Even if the information is available, it will be scattered over hundreds or thousands of websites located in a variety of TLDs.

- 5.2. The Public Interest Closed Generic TLD .EARTHQUAKE could provide a TLD space for organizations and experts in these substantive areas. One can envision .EARTHQUAKE applied for by a United Nations department or agency, a national agency such as the U.S. Geological Survey or an earthquake relief organization (or a consortium of such agencies) to run the PICG TLD as a trusted space for organizations and experts, including:
 - 5.2.1. Search and rescue teams
 - 5.2.2. Search and rescue training
 - 5.2.3. Post-disaster medical rescue teams
 - 5.2.4. Organizations with food and tents after an earthquake disaster
 - 5.2.5. Specialists in construction of earthquake proof buildings (preparation before an earthquake)
 - 5.2.6. Groups that stabilize buildings in a post-earthquake situation
 - 5.2.7. Manufacturers, distributors, and retailers of disaster relief supplies
 - 5.2.8. Relief organizations for natural disasters, including earthquakes.

- 5.3.** One can imagine a PICG TLD space structured to reflect a different hierarchy and structure of TLDs -- with general second level domains which provide access to shared resources, even overlapping resources. Their goal might be to offer a full array of resources for those seeking to prevent damage when an earthquake hits, or those preparing disaster plans should an earthquake occur.
- 5.4.** The PICG TLD, for example, may choose to devote an array of general second level domain names to a shared group of services and organizations and thereby provide a clear and rapid overview of global, regional, national and local offerings of information, services and experts.
- 5.5.** Overall, this PICGS TLD will help make available substantive information that countries, cities and towns may need for earthquake preparation and to reduce loss of life and property. One can imagine PICG TLDs for education, climate change, poverty and even pandemics.

6. Conclusions and Recommendation

The introduction and management of public interest closed generic TLDs as described in this paper satisfies several conditions.

First, it provides a well-defined structure in which public interest closed generic TLDs can be implemented, with significant assurances that they will be used for public benefit -- and continued to be used for the public benefit for the duration of their existence.

Second, it puts the incentives for public interest considerations in the right place. It thwarts the possibility of investment in a PICG TLD for significant financial gain and it encourages the creation of a robust collection of information about a topic that heightens the value of the TLD to the world-wide Internet community.

Third, it is highly likely to meet GAC approval for ensuring that the public interest closed generic string category will not be used or co-opted in ways that do not benefit the public interest objective of the TLD.

We recommend that this proposal (or a revision of it) be included in the SubPro PDP Working Group document that will soon be submitted to the ICANN community for public comment as an improvement on the stalemate that currently exists, a viable solution to the issue of fashioning appropriate policy for public interest closed generic strings, and additional certainty and predictability for applicants of these unique resources.