Pros (Arguments raised in favor of allowing Closed Generics)

- The full purpose of expanding the DNS--increasing its utility -- cannot be accomplished if we try and dictate the ways that TLDs can be used.
- CANN should not become the world's arbiter of what constitutes a "generic word" nor should it have the right to decide whether applicants for generic terms in the TLD space may operate in a "closed" or "open" manner.
- ICANN should not be in the business of classifying words for regulatory purposes, creating a new form of centralized, global content regulation that would pose long-term threats to freedom of expression.
- ICANN should not be dictating business models. Choice of a business model should be left to registries and subject to the discipline of the market. Closed v. open gTLDs is just a business model. ICANN should not pre-empt business models; the public benefits from having options. There is no evidence that allowing closed generic registries would hinder, rather than facilitate, online innovation.
- Registration and restricted use of generic terms is already a common practice in the second level space. Closed generics are no different in principle from Barnes and Noble registering books.com, C/NET news registering news.com or the Scripps companies registering food.com. Applicants for generic TLDs have proposed basically the same model using a top level name. There is no relevant difference between the second level and the top level of the DNS in this case.
- Focusing on the top level only, there is also no relevant difference between .MUSEUM and a .BOOKS domain name. Also, there is resemblance between closed generics and community applications such as .ART or .ARAB. Closed generics are no different from "brand" TLDs when the brand name corresponds to a generic word--(e.g., giving .apple to Apple Computer. If it is not a problem when brand owners do it, why does it become a problem when Amazon registers .book, Google applies for .cloud or Toyota applies for .auto?

- The example of Barnes & Noble's books.com and Amazon.com shows that there is no automatic linkage between ownership of a domain name and domination of the market signified by that domain.

- It is far outside of ICANN's mission to mitigate competitive advantages that might come from the assignment of generic TLDs. ICANN should leave judgments about market power and anti- competitive behavior to legally recognized authorities operating under well-established antitrust laws.

- If ICANN regulates the right of domain name registrants to operate closed generics, ICANN would actually limit free expression by imposing collective obligations and top-down regulations on domain owners.

- Many of the innovations we expect to arise from the new gTLD program will emerge from single registrant models. There are many creative models for TLDs that serve a more curatorial purpose, and we believe that these models will make the Internet better for both users and brand owners. We need to think more broadly beyond the idea of competition as being between multiple TLDs with the same business model to include new business models not yet tested by the market. By allowing registry operators flexibility in their business models, ICANN will maximize the opportunity for innovation to develop real competition and choice for users.

- Claims that consumers will be confused by closed generic TLDs are speculative.

- The assertion that closed generic TLDs were not "foreseen" when the AGB framework was being drafted is highly questionable. No language was included in the AGB or accompanying materials which expressed any concerns with closed gTLDs.

- ICANN should avoid making any changes based on assumptions about applicant business models and stay focused on its core mission--the security and stability of the Internet--and the timely launch of new gTLD strings.

- New gTLDs are valuable economic assets. ICANN policies should assure that these assets are allocated to their most highly valued uses.

Cons (Arguments why we should not all Closed Generics)

- Closed gTLDs for generic industry terms (e.g., .book, .security) are not in the public interest
- Closed gTLDs contradict ICANN's core values, including promotion of competition in the public interest. The public interest is particularly at risk in the case of generic terms that are defined by statute or other legal authority (e.g., IRA). While similar risks may arise in the context of individual domain names registered in .com, but the potential impact of a new gTLD string is much greater. By contrast to the registration of a .com domain name, a new gTLD requires ICANN approval and substantial resources, both for the application and for the operation of the gTLD. Search engines are likely to give priority to pages associated with a gTLD that appears to be dedicated to content related to the search terms and more likely to be controlled by an established, relevant institution. The stakes are higher regarding ICANN delegation of a gTLD, and the public interest concerns must weigh more heavily than they do for individual domain names.
- These strings should be open and unrestricted since generic words used in a generic way "belong" to everyone. Allowing such closed gTLDs would harm competition, limit consumer choice and confuse consumers.
- Delegation of closed gTLDs may violate ICANN's by-laws and the New gTLD Registry Operator Code of Conduct. The exemption that permits closed gTLDs was intended for brand TLDs, not generic words that are common industry terms. ICANN's core values include promoting competition in the registration of domain names.
- Closed generic TLDs reduce choice, hinder competition and would undermine the goals of the trademark system which forbids individuals to gain exclusive property rights in generic names of products and an unfair competitive advantage in the marketplace.
- Delegation and operation of closed registries for generic industry terms by a single industry participant would be contrary to well-established legal principles (see Appendix A of Microsoft comments, Foreign Statutes Pertaining to Generics) and would present an anti-competitive risk.

- Closed generic TLDs circumvent the Registry Operator Code of Conduct and New gTLD Registry Agreement. . . Applicants are attempting to circumvent the Code of Conduct and Agreement through exemptions that were not intended for them.
  - *Note from Jeff N: This was discussed at the last call when the Code of Conduct was read aloud by Paul McGrady (include cite). On the call no one could offer any explanation as to which provision in the Code of Conduct was violated*
- Closed gTLDs are anti-competitive. They would limit opportunities for numerous businesses to compete and have marketing power and the same prominence on the Internet as large corporations (e.g., gaining unfair advantage in direct navigation and online searching).
- ICANN's delegation of closed generic TLDs for exclusive ownership and control by a single industry player would be contrary to the existing accepted legal norms for intellectual property rights and may have an anti-competitive effect that is contrary to ICANN's stated goals and policies.
- Closed gTLDs should not be allowed; they are a threat to the openness and freedom of the Internet.
- ICANN should serve the global public interest and reject those anti-competitive applications that could create detrimental economic and cultural harm to significant portions of the Internet community.
- These words are the common heritage of all people. Fairness of the domain name system and its equitable disbursement is a key part of the world's economic trajectory.
- For non-Latin character sets in languages such as Chinese and Japanese, closed generics may place entire cultural identities at risk. There will be loss of opportunity for people and businesses in that native language to express, pursue and flourish in TLD namespaces designed for them.
- Closed generics may mislead consumers: If closed, generic TLDs are approved, consumers may mistakenly believe that they are using a gTLD that allows for competition, when in reality the gTLD is closed and the apparently competitive products are being offered by a single entity.

- Improper Extension of Trademark Rights
    - Where a gTLD corresponds to a trademark, the rights holder may have exclusive rights to use the descriptive gTLD for the goods and services for which it has trademark protection. However, a descriptive gTLD holder should not be able to extend their rights beyond the scope of their trademark protection in order to create a monopoly excluding interested users from benefiting from the gTLD.
    - Allowing applicants to register gTLDs comprised of terms that the public commonly uses to identify a class of products or services as a closed domain would be the equivalent of granting trademark protection when there should be none. Allowing such a term's exclusive use by any one entity, whether as a trademark or as a gTLD, would infringe upon an important collective and society-wide ownership.

Arguments Raised for a Case-by-Case Determination

- ICANN should not support completely uncontrolled use of generic words as TLDs. However, some instances of generic word TLDs could be both reasonable and have very strong benefits of just the sort ICANN seeks. Such uses should not be excluded as long as it can be established that they serve the public interest. Allowing this nuanced approach would likely involve a case by case review of how a TLD will be used and how its sub-domains will be allocated. Moreover, it would require a contractual commitment to not change that model once the TLD is delegated.
- Because each so-called "closed generic" application may involve differing considerations as to the Public Interest in granting exemptions to the ICANN Registry Agreement, each such application should be evaluated independently (e.g. at this stage of the program, such analysis could most appropriately be done in the context of String Contention procedures or individual Public Interest evaluation when "closed generic" applications are not in String Contention; in both scenarios, public comment should be sought regarding each applied-for "closed generic" string).