



New gTLD Subsequent Procedures PDP

Legal/Regulatory Work Track 2 | 28 September 2017

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Closed Generics
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AOB

What is a “Closed Generic”?

- **“Closed Generic”** is referred to in the community as a “TLD string that is a generic term and is proposed to be operated by a participant exclusively for its own benefit.”

(2 February 2013 NGPC Meeting)

Referred in the Specification 11.3.d as a “Generic String”

Registry Operator of a “Generic String” TLD may not impose eligibility criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or that person’s or entity’s “Affiliates” (as defined in Section 2.9(c) of the Registry Agreement). “Generic String” means a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others.

Why are we considering this?

The ICANN Board, in their structure as the New gTLD Program Committee, in their 21 June 2015 meeting directed the following:

Resolved (2015.06.21.NG02), to address the GAC's Category 2.2 Safeguard Advice, the NGPC requests that the GNSO specifically include the issue of exclusive registry access for generic strings serving a public interest goal as part of the policy work it is planning to initiate on subsequent rounds of the New gTLD Program, and inform the Board on a regular basis with regards to the progress on the issue.

It was the determination of this WG to consider this matter in WT2.

What have we done up until now?

- We have analyzed Pros (Closed Generic as an innovative business model) and Cons (proposed harms to consumers and the public interest) that were raised in Public Comments when ICANN asked for feedback for how to address Closed Generics.
- We have invited special guests to provide their professional feedback in regards to allowing or not allowing Closed Generics.
- We have analyzed feedback from CC2 comments about how to pursue policy development.

Closed Generics – Key Findings

There are several cases where a generic string may operate in an exclusive manner.

- If a gTLD qualifies as a .Brand TLD and meets the qualifications of Specification 13 by having a trademark for the string, then they may operate in an exclusive manner for the registry and/or its affiliates. Ex: .food and .apple.
- If a gTLD receives an exemption to the Registry Code of Conduct by demonstrating that implementation of the Code of Conduct is not necessary to protect the public interest, then they are able to operate in an exclusive manner. Ex: .office and .play
- If a gTLD establishes certain registration criteria such as price or qualifications in such a fashion that a result of few registrations being made, then the gTLD may be operating in a way that could be interpreted as exclusive. Ex: .makeup

In order to move forward with policy, we must address several elements.

- In the NGPCs direction to the GNSO, we are to carry out policy work in regards to the exclusive registry access for generic strings serving a public interest goal.
- The majority of comments and concerns about Closed Generics is that there is proposed harm to the public interest. However, the interpretation of public interest spans from registrars, registrants, business consumers, and everyday internet users.
- Several comments also raised concern that Closed Generics violated ICANN's bylaws and its core values in terms of not promoting the registration of domain names.
- Those in support of allowing Closed Generics saw it as an opportunity for innovation, creativity, and also a way to protect the public interest.
- We must also consider predictability.

Consideration for a path forward.

- Because there is not one definition for public interest, we should document all cases where the public interest or users were mentioned so that we have clear understanding for who to refer to.
- Noting that there are already cases where Closed Generics are operating, one option is to consider allowing generic strings to operate in a exclusive manner that is not harmful to the public interest.
- Tying the aspect of predictability, introducing new questions to the application could provide better visibility.
 - Is the string considered generic?
 - Will the TLD be operated exclusively?
 - Is there evidence of harm against the public interest?
 - Are there any mitigation measures that could be introduced?
- Further consideration for public interest objections, clarifying questions, and dispute resolution is also necessary.