

28 July 2023

Re: ICANN org input into Facilitated Dialogue on Closed Generics

Dear members of the GAC-GNSO-ALAC Facilitated Dialogue on Closed Generic gTLDs,

We would like to thank you for the opportunity to provide feedback on the draft framework and congratulate the group for reaching a broad understanding on how subsequent policy work on this complex topic can be framed.

ICANN org has a few comments that we would like to share as the group proceeds to work towards a Final Framework to underpin the policy work that we understand the GNSO Council is considering to initiate. Please note that our feedback does not imply that ICANN org has determined that the framework is unimplementable. ICANN org looks forward to working with members of the expected EPDP team, in our customary roles as appropriate in a community policy development process to facilitate the development of clear and implementable policy recommendations.

Our specific observations on certain aspects of the framework are as follows:

- a. ICANN org understands that the dialogue group took into consideration the current definitions of “Affiliate” and “Generic String” in the Base gTLD Registry Agreement in developing its proposal that certain types of relationships and entities could be included as potential registrants or beneficiaries in a closed generic gTLD. ICANN org believes that it will be necessary, either during this facilitated dialogue, or during a future policy development phase, as appropriate, to objectively define the scope of these relationships and entities that should fall in this expanded category so that the dividing line between a “closed” gTLDs and other types of restricted gTLDs is clear. For example, an EPDP could provide a policy recommendation specifying the types of organizations that would be within the scope of the related entities in this category that should be included as potential registrants or beneficiaries in a closed generic gTLD. Additionally, more guidance would be needed to understand the boundaries of what constitutes a “generic string”.
- b. The Governmental Advisory Committee referred to the concept of ‘public interest’ with regard to closed generic gTLDs in its 2013 Beijing Communiqué. ICANN org notes that it is likely to be very difficult to develop a universal, agreed definition of what is in “the public interest”, but consideration could be given to whether further guidance can be provided to objectively define what it means for any TLD, including a closed one, to serve a public interest goal. It may well be more appropriate for this discussion to be part of the substantive policy discussions expected to take place in the anticipated EPDP, and our feedback on this point should not be taken as

indicating the specific forum in which this discussion should take place or its outcome.

- c. ICANN org appreciates the group's comprehensive proposal for determining whether an applicant for a closed generic gTLD should be awarded the applied-for string. However, there may be value for the group to explore whether a 'scoring system' is the way forward or whether the policy could focus on the type of restrictions that would be placed on a self-designated 'closed generic'. We raise this point in the context of the perceived lack of objective, transparent and consistent decisions with regard to Community Priority Evaluations during the 2012 round was a major concern among the community, and, in our view, a similar outcome should be avoided for any future process around closed generic gTLDs.

As a general matter and as the dialogue group begins its deliberations on a Final Framework, ICANN org would like to encourage the group to bear in mind the need to balance a thorough process for applying for, evaluating and operating a closed generic gTLD with the risk that an overly complex and costly process could result in only a very small number of eligible applicants deciding to apply for as well as fulfill all requisite criteria to operate a closed generic gTLD.

We hope this brief input is helpful and invite you to reach out to ICANN org's GDS or other teams if we can be of any assistance.

We look forward to reading the group's Final Framework and thank you again for the effort the group has made to reach this milestone.

Sincerely,



Theresa Swinehart
Senior Vice President of Global Domains and Strategy