

At-Large's Subsequent Procedures Scorecard: Closed Generics

CPWG SubPro Small Team

At-Large Consolidated Policy Working Group (CPWG) Call
Wednesday, 18 March 2020, 19:00 UTC



APPLICATION EVALUATION/CRITERIA

Topic/Area:	[24] CLOSED GENERICS [2.7.3]	Priority:	HIGH	Settled On:	
Related:	<ul style="list-style-type: none"> Generic terms as TLD – RA Spec 11 3(d)¹ Single Registrant; eg. .Brand TLDs 				
Key Issues:	<ul style="list-style-type: none"> Pursuant to GAC Beijing Communique 2013, GAC advised that, “For strings representing generic terms, exclusive registry access should serve a public interest goal” (the “Category 2.2 Safeguard Advice”), and proceeded to identify a non-exhaustive list of such ‘generic’ strings applicable in the 2012 round affecting 186 applicants for potential Closed Generics. After ICANN solicited responses from those 186 applicants on their plans to operate strings as Closed Generics (through exclusive access registries, defined as registry restricted to a single person or entity and/or that person’s or entity’s “affiliates” per section 2.9c of the RA), all but 5 of the 186 applications agreed to withdraw their applications or change their TLDs to being “open”. A 2015 Board resolution gave the remaining applicants 3 options: (1) change to open registry; (2) maintain plan to operate Closed Generic and be deferred to next round, thus subject to new rules; or (3) withdraw and receive appropriate refund. This effectively meant that Closed Generic / Exclusive Generic TLDs were banned in the 2012 round. All 5 applicants – for strings: HOTELS, GROCERY, DVR, DATA, PHONE – eventually submitted change requests to “open” and these strings have since been delegated. Notwithstanding, what rules should apply to Closed Generic applications in subsequent procedures? 				
Policy Goals:	Charged with analysing impact of Closed Generics for future policy purposes, SubPro PDP WG generally agrees that some form of policy guidance should be drafted but it hasn’t reached consensus on path forward.				
Assigned CCT-RT Rec’s:	None				
References:	<ul style="list-style-type: none"> 04. SubPro Closed Generics, 17 March 2020 Working Document_SubPro ICANN67 Discussion Topics, 17 March 2020 ICANN: Do Not Allow Closed New gTLDs With Generic Strings, 16 February 2020 				

¹ Registry Agreement Specification 11 3(d) says, “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 “Affiliate” (as defined in Section 2.9(c) or the RA). “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.”

<ul style="list-style-type: none"> • SubPro WG Application Evaluation/Criteria_Summary Document, 7 January 2020 • 03. SubPro Reserved Names, Closed Generics & Registrant Protection, 20 August 2019 • ICANN Board resolution on Exclusive Generics for 2012 round, 21 June 2015 			
What has SubPro PDP WG concluded?	<u>What will/might SubPro PDP WG recommend?</u>	Is this acceptable? If not, why so?	What else needs to be done and by/with whom?
<p>1. No consensus on path forward. In addition, per Board input, still subject to how to define “public interest” and public interest goals</p>	<p>Unclear except to confirm no consensus on path forward. The options considered, and which received varying responses, were:</p> <p>Option 1: No Closed Generics – Formalize GNSO policy to disallow</p> <p>Option 2: Closed Generics with Public Interest Application – Allow but require applicants demonstrate the CG serves a public interest goal in their application subject to Objection process</p> <p>Option 3: Closed Generics with Code of Conduct – Allow but require applicant commitment to a code of conduct addressing concerns expressed by those opposed to CG (through a Community Objection-like process)</p> <p>Option 4: Allow Closed Generics subject only a Community Objection-like process</p>	<p>ALAC statement AL-ALAC-ST-0926-02-01-EN to SubPro IR expressed cautious qualified support for Options 2 and 3 in the spirit of finding a compromise.</p> <p><i>“Closed generics should be prohibited unless coupled with a Public Interest Application. Closed generics allow an applicant to have a potentially unfair influence over registration priority in a generic term, such as “app.” Additionally, closed generics lead to a slippery slope that could enable significant security risks for those particular strings, particularly for dotless domains as the SSAC found. Closed generics can exist – but they may introduce unintended security and stability issues which the SSAC should weigh in on. Thus, to completely eliminate this competitive and security threat, ICANN must prohibit their use.”</i></p>	<ul style="list-style-type: none"> • Revisit with GAC to establish currency / changes to underlying intent of GAC Beijing Communique 2013 • Check for SSAC advice or ask for their current position? • Given the clear lack of consensus identified by SubPro PDP WG, we may want to be more prudent and alter our position to outrightly support Option 1?

What has SubPro PDP WG concluded?	<u>What SubPro PDP WG will likely omit?</u>	Is this acceptable? If not, why so?	What else needs to be done and by/with whom?
2.			
<u>PENDING ISSUES:</u>	SubPro PDP WG reaction	Anything missing?	What else needs to be done and by/with whom?
<p>3. Questions over what is the “default” position in the event there remains insufficient consensus for a path forward.</p> <p>Considering proposal to develop fresh policy recommendation moving forward instead of falling back on the “default” position regardless of what that might be.</p>	<p>SubPro PDP WG during its calls of 18 Feb and 20 Feb 2020 was attempting to establish a level of support to develop a fresh policy recommendation including a call for proposals for consideration in respect of whether to allow closed generics in some way.</p> <p>We need to answer:</p> <ul style="list-style-type: none"> • If there are any circumstances for which we would allow <u>qualified</u> closed generics? • If yes, then how to describe those circumstances exhaustively? Establish a definition of closed generic by consensus? How does it support public interest? Or how public interest is harmed? • Is mandating explanation on how application for closed generic supports the public interest enough to assess it? 		

	<p>Can these be offered through PICs?</p> <ul style="list-style-type: none">• If yes, who should assess and decide whether something is in the public's interest? ICANN Board?• How should such offered PICs and/or factors in support of public interest be used (if at all)?• What sort of (additional) contractual requirements should be proposed to enforce compliance?		
Position:			

DRAFT