

# **New gTLD SubPro: Closed Generics**

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# “GENERIC”

Be prepared for confusion...

- ICANN **LOVES** using the same word in multiple ways that may conflict with each other (“consensus” perhaps the best example)
- gTLD = Generic Top Level Domain
  - As opposed to a ccTLD
- Here we are talking about gTLDs, but the “Generic” is not the “g” in gTLD!

# A Generic gTLD

- A TLD String that is a common word, used as that common word
- There are many such TLDs
  - .actor, but not .apple
  - .bike
  - .car
  - .delivery
  - .expert
  - .fish

# Closed TLD

A TLD that the Registry itself uses. There are no registrants.

- Typically “.brand” TLDs
  - .apple
  - .barclays
  - .cisco
  - .dhl

# Closed Generics

A Single registrant TLD that is not a common word and not a .brand.

- The Applicant Guidebook for the 2012 round was silent on such applications.
  - Anything not forbidden is allowed
- GAC Advice: ICANN46, Beijing

***For strings representing generic terms, exclusive registry access should serve a public interest goal.***

# Board Action

## New gTLD Program Committee (NGPC)

### Resolution 2015.06.21.NG02

- 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.

# And...

Exclusive Generic Applicants ... must elect within a reasonably limited time to either:

- a. submit a change request to no longer be an exclusive generic TLD, and sign the current form of the New gTLD Registry Agreement;
- b. maintain their plan to operate an exclusive generic TLD. As a result, their application will be deferred to the next round of the New gTLD Program, subject to rules developed for the next round, to allow time for the GNSO to develop policy advice concerning exclusive generic TLDs; or
- c. withdraw their application for a refund consistent with the refund schedule in the Applicant Guidebook.

# Fast Forward to the SubPro PDP

- Began in February 2016
- Ground rules: Status Quo
  - If the PDP cannot come to consensus on a change, the rules in effect for the 2012 round will be unchanged.
    - the rules in effect
      - i.e. the Applicant Guidebook PLUS whatever actions the Board took to alter the published rules
  - Implication: If you are happy with the Status Quo, you have no reason to negotiate or compromise unless you think someone else's idea will reach consensus

# So what IS the Status Quo?

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  - c. withdraw their application for a refund consistent with the refund schedule in the Applicant Guidebook.
- No closed generics could proceed in the 2012 round but
  - They were not forbidden

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# To date...

- LOTS of discussion
- Some informal proposals, all shot down
  - .disaster operated by the Red Cross.
  - Few explicit rules, but must have Board approval
- No where near consensus!

# Transparency & Disclosure

- I have been heavily involved in the debate
- I am not unbiased
- I am one of the authors of one of the proposals to be discussed
  
- I will try to be fair!

# Three Proposals

- Not For Profit<sup>1</sup>
  - George Sadowsky, Alan Greenberg, Kathy Kleiman, Greg Shatan
- Anything Goes
  - Kurt Pritz, Marc Trachtenberg, Mike Rodenbaugh
- Public Interest
  - Jeff Neuman (in his personal capacity)

<sup>1</sup> These are my summary titles!

# Not For Profit

- No single organization, even NFP, can represent the Public Interest
- Trust: the new TLD must be THE trusted area of the Internet in relation to its subject matter.
- Must not be operated with a profit motive
- NFP, but comparable to “community” status – must be managed by a consortium representing big players in the field.

# Not For Profit - 2

- Public Interest Closed Generic Review Panel (PICGRP)
  - Review applications and pass judgement.
    - Valid label to address the public service goal?
    - 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?
- Subject to Board approval
- Renewal subject to review

# Not For Profit - 3

- .earthquake

# Anything Goes

Permit the delegation of single-registrant TLDs for any string (including closed generics TLDs) so long as the application meets all other AGB criteria

- Public-interest test is unworkable, precludes innovation, and prevents no harm
- Even if a public-interest test is implemented, there is no certainty that the resulting TLD will provide the hoped-for benefit. Applicants can attempt to game the any public-interest test to obtain a TLD delegation, just as happened with Community TLDs in the current round

# Anything Goes - 2

- Closed TLDs provide an excellent platform for innovation.
- No real harm results even in cases where a single-registrant TLD fails to provide some hoped-for or planned benefit. These are just domain names and there are literally billions of choices. If a generic TLD is delegated and is not useful, the public will find a more useful domain, just as they have done at the second-level, with all “generic” word domains long taken in all major TLDs. The DNS got along for 35 years without the delegation of more than a handful of generic terms at the top-level. There is much to be gained by their delegation but there is little downside when compared to the DNS of the past many years.

# Anything Goes - 3

- Significant discussion on “open” TLDs with such restrictive rules that they are effectively closed, but no one is taking action.
- It is a non-issue at the second level, so don't worry here.
  - The registration of book.com by a large book store did not stop Amazon from succeeding as a book seller...

# Public Interest

- TLD must serve a broad base of end users and beyond the interests of individual registry operators
- Governance Council of “end users”
  - end user ≠ registrant
- Implementation Review Team must create a Framework for Evaluating Closed Generic applications to determine whether those applications “serve a legitimate public interest goal

# Public Interest - 2

- >2 application = not go forward
- Board appointed Public Interest Panel to evaluate application
- PICs form part of agreement and cannot be changed without Governance Council approval
- Makes reference to “competitors” which seem (to me!) to be at odds with the public Interest aspect.

# Public Comment

- Will ALAC comment on the proposals?
- If so, what will it say?

# My positions

- “Not For Profit” may be optimal (in my not-so-humble-opinion) but is unlikely to get sufficient support.
- “Anything Goes” omits addressing a key part of the Board charge to the GNSO of setting rules for the delegation of closed generics SERVING A PUBLIC INTEREST GOAL.
- “Public Interest” has some chance of gaining support, but for our purposes would have to be strengthened considerably.

# Read the Proposals

<https://community.icann.org/x/nAGbC>

# Discussion & Questions?