

# Registries Stakeholder Group Statement



## RySG feedback on the Draft Framework for Closed Generic gTLDs

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### Background<sup>1</sup>

The ICANN community participants in the Closed Generics Facilitated Dialogue are requesting feedback on a draft framework that can underpin additional policy work for handling closed generic gTLDs in future rounds of gTLDs. Feedback on the draft framework will inform the development of a final framework.

### Documents

- [Draft Framework for Closed Generic gTLDs.pdf](#)

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## Registries Stakeholder Group feedback on the Draft Framework for Closed Generic gTLDs

The Registries Stakeholder Group (RySG) welcomes the opportunity to provide feedback on the *Draft Framework for Closed Generic gTLDs* and appreciates the time and effort the participants to the Facilitated Dialogue committed to developing the framework.

In addition to concerns noted on the basic definition of a closed generic, we also note that this is not a policy development process. While we expect this work could provide important input into a policy development process, we note that the GNSO PDP must be undertaken if there is to indeed be policy developed on this issue.

We note the comments we are contributing are based upon the understanding that this is a Board directed process and not a formal policy development process. Our feedback is structured as follows: overarching comments, noting areas that are unclear and could present broad scope concerns, and practical implementation issues.

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<sup>1</sup> Background: intended to provide brief context for the comment – it is not a summary of the subject document.

## I. Overarching comments

A definition of what constitutes a Closed Generic has not been proposed in the Framework, nor appears to be agreed upon. While the Problem Statement & Briefing Paper for the work of the Facilitated Dialogue provides a 'proposed definition', it's unclear from the Draft Framework if it formally adopts that definition as the basis of its work.<sup>2</sup> An agreed upon definition of a Closed Generic TLD is an essential component before moving the concept to policy development.

In addition, while we recognize the work of the Facilitated Dialogue as an important input to this discussion, we also emphasise that if the Draft Framework is to be considered further, it must be subject to the appropriate policy development process.

Further overarching concerns surround how lack of clarity in the Draft Framework could impact scope concerns fundamental to ICANN's mission. The Draft Framework suggests that a closed generic applicant would commit that the TLD will not be used for fraudulent or illegal activity, which raises questions about how a TLD could represent that in the evaluation process as well as how, and what party, would enforce such a requirement. Another potential concern is the discussion of defining the 'public interest' by the Draft Framework or potential applicants. This has been the subject of long discussion across the Community and any potential definition in the Draft Framework or via an application could set a definitional precedent not vetted by the Community. In addition, criteria outlined in the Draft Framework that applicants commit to certain anti-competitive behavior could put ICANN in the position of enforcing on issues related to competition. These issues are outside the scope of the Facilitated Dialogue and would require policy development processes. Additionally, they raise questions as to the fundamental scope of ICANN's mission.

Finally, the proposed application and evaluation procedures are cumbersome and lack clarity to allow effective implementation. For example, employing a scoring system to evaluate closed generic gTLD applications would likely lead to unnecessary arguments that will only delay the implementation of a closed generic application process. Criteria that would allow an applicant to either meet all of the closed generic criteria set out in the framework or not is much less ambiguous.

## II. Implementation Issues

We note that adhering to the recommendations set out by the SubPro Working Group in this closed generics framework is important so as to avoid protracted relitigation of issues that have already been thoroughly considered, debated, and decided.<sup>3</sup> In addition, we note that Section 2 must be clear to the extent it addresses the criteria for closed generics.

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<sup>2</sup> Problem Statement & Briefing Paper, "Closed generic" gTLDs, also sometimes described as "gTLDs with exclusive registry access", are understood to be gTLDs representing a string that is a generic name or term under which domains are registered and usable exclusively by the registry operator or its affiliates. Specifically, the Base Registry Agreement for the 2012 New gTLD Program, Specification 11, section 3(d) states that: "a '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." A Registry Operator of a 'generic string' top-level domain (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). As part of their initial discussions, dialogue participants may want to consider whether the above-noted definitions are appropriate or whether additional clarification may be needed with respect to the definitions of "closed," "generic," and "exclusive registry access" in the gTLD context.

<sup>3</sup> Draft Framework: 1. *The application process for closed generic gTLDs will, to the greatest extent possible, be the same as for standard gTLD applications, but there will be additional criteria for closed generic gTLD applications.*, 2. *The criteria for closed*

In addition, remaining consistent with SubPro Recommendations 12.4-12.9, which call for the Applicant Guidebook to be clear and drafted with users in mind is important. Providing straightforward, thorough instruction in advance is important for predictability in any future application process that would be commercially feasible for applicants to participate in.

Lastly, modifying the language in Section 2 as follows would clarify the timing for publishing the closed generic criteria: “The criteria for closed generic gTLDs must be clear and published ~~in the final Applicant Guidebook~~ in advance of the ~~an~~ application window **that allows for closed generic gTLDs for a new gTLD round.**”

### III. Concerns with commercial feasibility

We believe there has been a misunderstanding of the focus of the work on these issues. Commercial issues are out of scope for the work of this group and the commitments suggested and following a formal policy process, could be impractical when it comes to possible future enforcement considering ICANN’s scope and mission.

For example, with respect to Sections 11 and 12 of the Draft Framework, the framework would be more in line with SubPro recommendation 12.4 regarding clarity for users and thus be more commercially feasible if applicants were asked to explicitly identify an application as requesting a closed generic gTLD. An explicit identification would also aid evaluators in assessing these applications. The following two suggestions would add clarity and bring the Draft Framework in line with policy recommendations:

1. Add a new section before the current Section 4 of the Draft Framework which says: “Self-identify [e.g., via a check box] that this application is a request for a closed generic gTLD.”
2. Move Section 12 after the new section suggested directly above and before the current Section 4 and make the following redlined modifications for clarity: “**(1) Indicate the language of the generic term, and (2) e**~~Explain what types of goods, services, groups, organizations, products, things, etc. are described by~~ the generic term **describes** for which the applicant is applying.”

Sections 13 and 13.a of the Draft Framework are likewise not in line with SubPro Recommendation 12.4. At best, these sections ask an applicant to predict why external parties may want to object to its closed generic application. At worst, these sections require an applicant to supply external parties with reasons to object to its application. An AGB that directs applicants to thoroughly lay out the proposed use and public interest benefit of the closed generic gTLD would be sufficiently in line with SubPro Recommendations. We also note that the SubPro Recommendations already provide ample opportunity for public comments and objections (*see* Topic 30 GAC Early Warnings and Topic 28 Role of Application Comment; *see also* Recommendations 28.1, 28.11 (“Applicants must have a clear, consistent, and fair opportunity to respond to public comments . . . .”)).

Finally, to the extent Sections 19 and 19.a are proposing that a separate panel be selected to assess each individual closed generic application, this will likely lead to protracted litigation and debate. To avoid this, the Draft Framework should (1) make clear that there will be one panel assessing all closed generic gTLD applications, and (2) remove the phrase “consisting of suitably qualified individuals.” The fact that the arbiters must be qualified should be implied, and including this language in the Framework will lead to unnecessary debate and delay at this early stage of the framing process.

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*generic gTLDs must be clear and published in the final Applicant Guidebook in advance of the application window for a new gTLD round.*

To remedy this, the Draft Framework could combine and modify Sections 19 and 19.a as follows:

19. The evaluation of **all** closed generic gTLD applications must be performed by **one provider a panel consisting of suitably qualified individuals. that will**

~~19.a. The evaluation panel must assess each individual~~ **all** closed generic gTLD applications to determine if ~~it~~ **they sufficiently** meets **all of** the criteria to pass evaluation as a closed generic gTLD.

#### **IV. Conclusion**

We recognize the work that has gone into developing this draft document and have attempted to provide feedback in a constructive and clear manner. We hope the team is able to address those areas where the language of the Draft Framework strays into issues subject policy development processes and those for which the practicality of implementation could be impacted by ICANN's scope and mission.

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