CC2 Themes – Work Track 2
Closed Generics

2.4.1 - In the 2012 round, the operation of a TLD where the string was considered "generic" could not be closed to only the Registry Operator and/or its Affiliates. Originating from GAC Advice on the subject, this rule was promulgated by ICANN's New gTLD Program Committee of the ICANN Board, but was never adopted as a policy by the GNSO. This rule was subject to public comment and input from the community. Should this rule be enforced for subsequent application windows? Why or why not?

Jannik Skou, INTA, BC, BRG, Afilias, Google and RySG support allowing closed generics.

Sample excerpts:

"No, it is hard, if not impossible to find a cross language definition of a generic Term. However, if applied for a closed string (as Spec 13 or exemption of code of conduct) , it should not be allowed to open later." (Change policy)." – Jannik Skou

". . . The current definition of a generic string, as defined in Specification 11.3.d of the Registry Agreement. . . is overly broad and potentially captures brand owners and captures TLDs that would not be used for a purpose that would otherwise be considered descriptive. . . Therefore, the **current rule not permitting "closed generics," as currently drafted, potentially harms brand owners**, even though some protections exist for brand owners. Ostensibly, **it is too difficult, if not impossible, to determine what is "generic" and terms and words over time may acquire distinctiveness or lose it**. Thus, INTA's position is that **ICANN should not be deciding what a generic string is and what it is not**, and an applicant's request to purchase and operate a closed generic, subject to string contentions, should be outside the purview of ICANN." -- INTA

There **should not be a blanket rule prohibiting closed or restricted business models for TLD strings comprised of "generic" terms**, especially given the **ambiguities in how such terms are defined**. Allowing registry operators to experiment with a variety of business models facilitates **innovation and competition**, and can **result in well-understood communities** that benefit users. There is precedent for such a registry model with legacy gTLDs such as .mil, .edu, and .gov, which are all comprised of abbreviated dictionary terms and yet are restricted to specific entities or purposes as a means of developing user trust. Certain proposed "generic" TLDs may still present legal or public policy issues that are worth addressing, but such concerns may be dealt with on a case-by-case basis and through existing community-developed mechanisms such as the four objection procedures (string confusion, legal rights, community, public interest) which are designed to protect consumers, brands, and the general public. . ." – BC

"The **prohibition on "closed generics" should be lifted**. As a matter of course, the **program should not be focused on content and use, only creating opportunity**. ICANN should support as many broad ideas as possible; only this approach will create an environment that fosters **innovation**." – Afilias

"... We believe that an **unrestricted process has better potential to unlock innovation, competition, and enhanced utility of the DNS** and maximize the benefits associated with a future application process. Further, we believe that the Working Group should **consider whether waiving the broad prohibition on "closed generics" that was introduced late in the 2012 Program would support these goals**. We continue to believe that **even for strings consisting of commonly utilized terms, a more structured and managed registry model may have the potential to provide a secure and innovative namespace, and can result in a well-understood community that benefits users**." -- Google

"No, there should be no rule against closed generics in future application windows. . . We suggest the four **objection procedures** (string confusion, legal rights, community, public interest) provide **adequate protections** for consumers, brands, and the public. **gTLDs are not required to "index" the internet** and, indeed, do not appear to be serving an indexing function. There are **no security or stability concerns** that should force ICANN to intercede.

"Closed generics" present exciting opportunities for current and future registry operators to **use domain names in new and exciting ways**, subject to current protections such as UDRP. . . If we force ROs to simply sell domain names to the public only for a "classic" use or speculation of domain names, we are stifling the ability of companies to create and to expand the use of the DNS. In addition, we are creating a protectionist-like rubric around a status quo to the benefit only of those who follow the same classic model." -- RySG

GAC, NORID, Jim Predergast, ALAC, John Poole, and Nominet supported restricting closed generics.

Sample excerpts:

"... The GAC advised in its Beijing Communiqure (April 2013) that for **strings representing generic terms, exclusive registry access should serve a public interest goal. The GAC identified a nonexhaustive list of strings that it considered to be generic terms, where the applicant was proposing to provide exclusive registry access. The GAC's advice is based on principles of promoting competition and consumer protection.**" -- GAC

"We suppose you here mean "true" generic, such words as boat, car, book etc. Cf. our comments above under 2.2.1. These words **should in our opinion not be allowed to be closed** for use only of the Registry Operator and/or its Affiliates. The reasoning behind this view is that **these words would never have been accepted as a brand and received trademark protection. No-one should be the only one to be allowed to use a true generic word**. . ." – NORID

"While the process that developed the prohibition on closed generics was messy and open to improvement, the result is the appropriate one**. There is a ban on closed generics for the 2012 round and that should be extended to future rounds or allocation methods**." – Jim Prendergast

"Yes, permitting closed generics could impact both **consumer choice and consumer confusion**." – ALAC

". . . on balance we agree with the ban on closed generics for the foreseeable future." – Nominet (excerpted from response to 2.4.2)

2.4.2 - Do you have suggestions on how to define "generic" in the context of new gTLDs? A "generic string" is currently defined in the Registry Agreement under Specification 11.3.d as meaning, "a string consisting of a word or term that denominates or describes a general class of goods, services, group, organization or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others." Are any modifications needed to the definition? If so, what changes? If the exclusion of closed generic TLDs is to be maintained, are there any circumstances in which an exemption to the rule should be granted?

NORID, Nominet, BC, RySG, and ALAC expressed that, to the extent the rule against closed generics remains in place, the current definition is adequate.

Sample excerpts:

"This above **definition makes sense**. It separates true generic names from specific names. . ." – NORID

"If the PDP decides to retain the rule against closed generics, then the **definition appears adequate**." -- RySG

"No, the **definition is clear** and the ban should be maintained." -- ALAC

BC, Afilias, and RySG noted that if the prohibition on closed generics is lifted, it will no longer be necessary to define the term.

Excerpts:

"If we eliminate the blanket prohibition against "closed generics," defining the term "generic" may not be unnecessary." – BC

"The need to create a definition is obviated by eliminating the prohibition." – Afilias

"If the PDP WG reconsiders the purpose of the rule against "closed generics," defining such words as "generic" becomes unnecessary." -- RySG

INTA and John Poole suggested changes to the text.

"**Should ICANN maintain the rule against closed generics. . . an exception should be made to those applicants who do not qualify as .BRANDS under Specification 13 Paragraph 5.1, but can provide evidence adequate to prove that an applied-for string has been used as a source identifier** and has acquired distinctiveness indicating the origin of the goods, services, groups, or organization of things. . ." -- INTA

"Yes there are **changes that should be made dealing with collisions, Universal Acceptance isses, trademarks and service marks**, perhaps others." – John Poole

<u>NORID recommended separating "true-generics" from "pseudo-generics" in the discussion.</u>

Brands are definitively not "generic terms". Neither are geographical names in most cases; at least not names of countries. **Among the words that have been accepted as gTLDs there are many that are specific, given names that legally would not have been characterized as generic**. When discussing if "closed generics" should be allowed **you have to separate true-generics from pseudo-generics**. True-generics should not be allowed to be closed, but to be free to set certain conditions under which registrants are allowed to register at second level.
. ." -- NORID