

4.3.11 Closed Generics

- 4.3.11.1 *Explanation of Subject*

The 2007 Final Report did not provide guidance related to closed generics (e.g., restrictions on registration policies) and consequently, the AGB did not necessarily provide specific specifications or guidelines on the issue. However, the base agreement did include a provision that allowed an exemption to the Registry Operator Code of Conduct in specific instances:

Registry Operator may request an exemption to this Code of Conduct, and such exemption may be granted by ICANN in ICANN's reasonable discretion, if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) application of this Code of Conduct to the TLD is not necessary to protect the public interest.

After applications from the 2012 New gTLD Program round were published, concerns were raised in public comments and by the GAC, via Early Warnings and later via GAC Advice, that some registries proposed to use their applied-for generic string in an inappropriately exclusive manner, which some felt created an unfair competitive advantage and was against the public interest. As a result of these concerns, the ICANN Board requested that ICANN staff open a public comment forum on the topic of “closed generic” TLDs¹. Accordingly, staff opened the public comment period on 5 February 2013 and closing it on 7 March 2013². Coinciding with the closure of the public comment forum on the topic, the GNSO submitted correspondence to the ICANN Board³, noting that the GNSO did not have adequate time during the short period to establish formal policy guidance, though GNSO Stakeholder Groups and Constituencies Groups had submitted their views through the public comment forum. ICANN staff compiled and analyzed the public comments, publishing their report of public comments on 8 July 2013⁴.

- 4.3.11.2 *Questions and Concerns Related to Subject*

The subject of closed generics is not new, as indicated by the text above. While the DG identified closed generics as a topic of concern, wondering whether they should be allowed, specific concerns were not identified. However, the public comment forum for closed generics received substantial input in identifying a number of key issues, which will be briefly summarized here and can be viewed in their entirety in the staff public comment summary and analysis discussed above.

¹ See ICANN Board Resolution: <https://features.icann.org/closed-generic-top-level-domains>

² See <https://www.icann.org/resources/pages/closed-generic-2013-02-05-en>

³ GNSO Correspondence: <http://gns0.icann.org/en/correspondence/robinson-to-crocker-chalaby-07mar13-en.pdf>

⁴ See <https://www.icann.org/en/system/files/files/report-comments-closed-generic-08jul13-en.pdf>

Some questions, concerns, and suggestions include:

- Allowing a single entity to exclusive use of a generic term may allow them to have an inappropriate level of control over that term at the top-level, in particular for industry terms, where that exclusive control could result in anti-competitive behavior.
- Exclusive access is contrary to competition and consumer choice, and may in fact result in user confusion
- Suggestion for defining generic including using principles of trademark law (i.e., a term that could not be trademarked should not be eligible to be operated in a “closed” fashion).
- Suggestion that it may be more practical to define conditions under which a TLD could be operated in a “closed” manner rather than trying to define generic.

This list is by no means exhaustive and is intended to be merely illustrative of the types of questions and suggestions that have already been raised and should be taken into account if and when a potential PDP-WG on New gTLD Subsequent Procedures deliberates on this subject. The PDP-WG may also want to take into account more recent concerns around closed generics, where a combination of extremely high registration costs and difficult to achieve registrant restrictions could effectively make a generic TLD a single registrant in practice.

- *4.3.11.3 Relevant Guidance*

- Closed generics public comment summary and analysis:
<https://www.icann.org/en/system/files/files/report-comments-closed-generic-08jul13-en.pdf>
- GAC Advice Safeguards Category 2.2:
<https://gacweb.icann.org/display/GACADV/2013-04-11-Safeguards-Categories-2>
- Board Resolution: <https://www.icann.org/resources/board-material/resolutions-new-gtld-2015-06-21-en#2.a>
- [Steve Crocker ICANN BOARD Chair to Jonathan Robinson GNSO Council chair](#) (27 July 2015) - <https://www.icann.org/en/system/files/correspondence/crocker-to-robinson-27jul15-en.pdf>
- [Jonathan Robinson to Dr Steve Crocker Chairman ICANN Board](#) (15 September 2015) - <http://gnsso.icann.org/en/correspondence/robinson-to-crocker-15sep15-en.pdf>
- [Dr Steven Crocker, chairman ICANN Board to Jonathan Robinson, GNSO Council chair](#) (12 October 2015) - <http://gnsso.icann.org/en/correspondence/crocker-to-robinson-gtld-strings-12oct15-en.pdf>
- [Volker Greimann & David Cake GNSO Council, Interim Co-Chairs to ICANN Board](#) (24 November 2015) - <http://gnsso.icann.org/en/correspondence/gnsso-council-to-crocker-24nov15-en.pdf>

- *4.3.11.4 Rationale for Policy Development*

The topic of closed generics, and when exclusive registry access may be appropriate, has been a topic for extensive discussion within the community and there remain many open questions. In a resolution⁵, the ICANN Board has specifically requested that the GNSO include this topic in its policy work for new gTLD subsequent procedures, stating:

*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.*⁶

With substantial community interest in the topic, and the specific request from the ICANN board, exclusive registry access for generic strings will likely require policy development. As suggested in the NGPC text above, this subject may be applicable to the discussion around global public interest as well.

⁵ Board resolution: <https://www.icann.org/resources/board-material/resolutions-new-gtld-2015-06-21-en#2.a>

⁶ See section 4.3.11.3 for correspondence between the ICANN Board and the GNSO related to exclusive Registry Access for gTLD strings representing generic terms.