



# New gTLD Subsequent Procedures PDP

Legal/Regulatory Work Track 2 | 30 March 2017

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# Closed Generics - Recap

# Closed Generics – Background Information

## What is a “Closed Generic”?

- **“Closed Generic”** is referred to in the community as a “TLD string that is a generic term and is proposed to be operated by a participant exclusively for its own benefit.”

(2 February 2013 NGPC Meeting)

Also of importance...

- **“Generic String”** as referenced under the Registry Agreement Specification 11.3. d. in terms of a “Generic String” is defined as “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. “

# Closed Generics – Background Information

## What's in writing?

### GNSO Policy:

- No reference to Closed Generics.

### Applicant Guidebook:

- No reference to Closed Generics.

### Registry Agreement:

- Registry Agreement Specification 11.3.d. Refers to exclusive registration in a “Generic String”.

*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 “Affiliates” (as defined in Section 2.9(c) of the Registry Agreement). “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.*

- Specification 9 “Code of Conduct” forbids a Registry or its Affiliates to allocate names in its own right other than names registered through an ICANN accredited Registrar or up to 100 names pursuant to Section 3.2 of Specification 5.

# Closed Generics – Background Information

## Exceptions to the RA that allow for “Exclusive Use”

- Exemption to Code of Conduct granted by ICANN 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 the exclusive use of Registry Operator or its Affiliates, (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.*

- Registry qualifies as a “Brand TLD” as defined in Specification 13 as a string where,

*(i) the TLD string is identical to the textual elements protectable under applicable law, of a registered trademark valid under applicable law, which registered trademark:*

*a. is recorded with, and issued a signed data mark file by, the Trademark Clearinghouse or any successor or alternative trademark validation authority appointed by ICANN, if such trademark meets the eligibility requirements of such validation authority (provided that Registry Operator is not required to maintain such recordation for more than one year);*

*b. is owned and used by the Registry Operator or its Affiliate in the ordinary course of Registry Operator’s or its Affiliates’ business in connection with the offering of any of the goods and/or services claimed in the trademark registration;*

*c. was issued to Registry Operator or its Affiliate prior to the filing of its TLD registry application with ICANN;*

*d. is used throughout the Term continuously in the ordinary course of business of Registry Operator or its Affiliate in connection with the offering of any of the goods and/or services identified in the trademark registration;*

*e. does not begin with a period or a dot; and*

*f. is used by Registry Operator or its Affiliate in the conduct of one or more of its businesses that are unrelated to the provision of TLD Registry Services; and*

*(ii) only Registry Operator, its Affiliates or Trademark Licensees are registrants of domain names in the TLD and control the DNS records associated with domain names at any level in the TLD;*

*(iii) the TLD is not a Generic String TLD (as defined in Specification 11); and*

*(iv) Registry Operator has provided ICANN with an accurate and complete copy of such trademark registration.*

# Closed Generics – Pros and Cons

# Closed Generics – Pros and Cons

**What this is:** Pros (reasons for allowing Closed Generics) and Cons (reasons for not allowing Closed Generics) have been pulled out of the summary of public comments undergone by ICANN to seek criteria for whether or not requirements should be adopted.

**Our objective:** To find if there is or not potential harm in allowing of Closed Generics as well as any other notable findings from the public comments.

**Reference material:** We will use a separate table to look at the majority of public comments that look at pros and cons. However, we will also be referencing the full summary of public comments at the following link for further details if required.

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