



New gTLD Subsequent Procedures PDP

Legal/Regulatory Work Track 2 | 1 February 2018

Agenda

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Closed Generics
Discussion

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AOB

What have we done up until now?

- We have discussed what a Closed Generic is and how it is currently defined in the current Registry Agreement.
- We have covered WHY we are talking about this (because we were directed by the ICANN Board to discuss this as a part of subsequent procedures PDP).
- We have addressed how in the current process there are ways that can be interpreted to be an exception to the Closed Generic rule (Spec 13 Brand Registry, exemption to Code of Conduct, and strict criteria for registering a domain in an open TLD).
- We have analyzed Pros (Closed Generic as an innovative business model) and Cons (proposed harms to consumers and the public interest) that were raised in Public Comments when ICANN asked for feedback for how to address Closed Generics.
- We have analyzed feedback from CC2 comments about how to pursue policy development.
- We have also looked at objection procedures that were based upon the expectation that an applied for string would be a Closed Generic. We saw successful objections as well as unsuccessful objections.

Closed Generics – Recap

In our last call we addressed key aspects that contribute to possible paths forward.

- In the NGPCs direction to the GNSO, we are to carry out policy work in regards to the exclusive registry access for generic strings serving a public interest goal.
- The majority of comments and concerns about Closed Generics is that there is proposed harm to the public interest. However, the interpretation of public interest spans from registrars, registrants, business consumers, and everyday internet users.
- Those in support of allowing Closed Generics saw it as an opportunity for innovation, creativity, and also a way to protect the public interest.
- After careful consideration of the harms and merits of allowing a Closed Generic, we found that it is difficult to address potential harms or merits without documented evidence of either.
- We also considered predictability.
- In our last call we found that if a Closed Generic could be considered in the public interest, then it may be beneficial to allow for this to occur. We discussed possibility of allowing for a Closed Generic if we could allow for objections to an application or if we could keep the applicant in check.

Closed Generics – Path Forward

Possible paths forward at this point. The extremes and inbetweens.

1. Bring policy up to date with the existing Registry Agreement that Closed Generics should not be allowed.
2. Allow Closed Generics but require that applicants clearly demonstrate the Closed Generic serving a public interest in the application. This would require the applicant to reveal details about the goals of the registry. Establish an objections process for Closed Generics that is modelled on community objections.
3. Allow Closed Generics but require the applicant to commit to a code of conduct. This would not require the applicant to reveal details about the goals of the registry but commit to annual self-audits that fall in line with the code of conduct in regards to Closed Generics. Establish an objections process for Closed Generics that is modelled on community objections.
4. Allow Closed Generics with no regulation but establish an objections process for Closed Generics that is modelled on community objections.