

At-Large "Closed Generic" gTLD Applications Workspace

Comment Close Date	Statement Name	Status	Assignee (s) and RALO(s)	Call for Comments	Call for Comments Close	Vote Announcement	Vote Open	Vote Reminder	Vote Close	Date of Submission	Staff Contact and Email	Statement Number
07.03.2013	"Closed Generic" gTLD Applications	Adopted 13Y, 0N, 1A	<ul style="list-style-type: none"> • Evan Leibovitch (NARA LO) • Alan Greenberg (NARA LO) • Rinalia Abdul Rahim (APRA LO) 	n/a	n/a	27.02.2013	27.02.2013	04.03.2013	05.03.2012	06.03.2012	Karen Lentz karen.lentz@icann.org	AL/ALAC/ST /0313/1

Comment/Reply Periods (*)		Important Information Links
Comment Open:	5 February 2013	
Comment Close:	7 March 2013	
Close Time (UTC):	23:59	Public Comment Announcement
Reply Open:		To Submit Your Comments (Forum)
Reply Close:		View Comments Submitted
Close Time (UTC):		Report of Public Comments

Brief Overview

Originating Organization:	ICANN	
Categories /Tags:	Top-Level Domains	
Purpose (Brief):	To receive stakeholder views and suggestions on the topic of "closed generic" gTLD applications.	
Current Status:	Existing provisions of the New gTLD Program do not provide specific guidance on this issue. Potential new provisions may be considered based on the comment provided and analysis undertaken.	
Next Steps:	ICANN staff will review comments submitted and will provide a summary and analysis of these comments to the New gTLD Program Committee of the Board of Directors. The Committee will review this feedback as well as the additional research and analysis directed to inform its consideration on this issue.	
Staff Contact:	Karen Lentz	Email: karen.lentz@icann.org

Detailed Information

Section I: Description, Explanation, and Purpose

ICANN is seeking public comment on the subject of "closed generic" gTLD applications and whether specific requirements should be adopted corresponding to this type of application. Stakeholder views are invited to help define and consider this issue. In particular, comments would be helpful in regard to proposed objective criteria for:

- classifying certain applications as "closed generic" TLDs, i.e., how to determine whether a string is generic, and
- determining the circumstances under which a particular TLD operator should be permitted to adopt "open" or "closed" registration policies.

The New gTLD Program Committee of the ICANN Board of Directors has discussed this issue and has also directed completion of a set of focused research and analysis items to inform any possible action to be taken. At its 2 February 2013 meeting, the Committee passed the following resolution:

Whereas, the New gTLD Program Committee has received correspondence from the community addressing "closed generic" TLDs and understands that members of the community term a "closed generic" TLD as a TLD string that is a generic term and is proposed to be operated by a participant exclusively for its own benefit.

Whereas, ICANN implemented the Generic Names Supporting Organization (GNSO) policy recommendations on the "Introduction of New Generic Top-Level Domains", and within those policy recommendations there is no specific policy regarding "closed generic" top-level domains (TLDs).

Whereas, members of the community have expressed concerns regarding applications for "closed generic" TLDs.

Whereas, the New gTLD Program Committee considers that it is important to understand all views and potential ramifications relating to 'closed generic' TLDs.

Resolved (2013.02.02.NG01), the New gTLD Program Committee directs the President and CEO to open a 30-day public comment forum on this topic, which should include a call for identification of proposed objective criteria to classify applied-for TLDs as "closed generic" TLDs.

Resolved (2013.02.02.NG02), the New gTLD Program Committee directs the President and CEO to, concurrently with the opening of the public comment forum, request the GNSO to provide guidance on the issue of "closed generic" TLDs if the GNSO wishes to provide such guidance. Guidance on this issue is requested to be provided by the close of the public comment forum.

Resolved (2013.02.02.NG03), the New gTLD Program Committee directs the President and CEO to:

- 1. Summarize and analyze all comments submitted in the public comment forum.*
- 2. Review materials supporting the policy development process resulting in the GNSO policy recommendations on the Introduction of New Generic Top-Level Domains and provide analysis of any discussions relating to the limitations on potential new gTLDs.*
- 3. Analyze the feasibility of objectively classifying applied for TLDs as "closed generic" TLDs.*
- 4. Provide an analysis as to whether the public interest and principles of international law are served by adopting a clear approach regarding 'closed generic' gTLDs.*
- 5. Provide a report to the New gTLD Program Committee informed by the comments received and analysis conducted, including alternatives to addressing this issue.*

Section II: Background

Following the publication of the gTLD applications in June 2012, concerns have been brought to ICANN's attention regarding some applications for strings which are labelled as "closed generic." These applications are considered problematic by some due to the proposed use of the TLD by the applicant, e.g., using the TLD in a manner that is seen as inappropriately exclusive, particularly in the sense of creating a competitive advantage. These applications have been the subject of public comments and Early Warnings.

Many of the communications link the issue of registration restrictions for a TLD with the Code of Conduct (Specification 9 to the gTLD Registry Agreement). However, it should be clarified that the Code of Conduct refers to registry-registrar interactions, rather than eligibility for registering names in the TLD. Rather than the Code of Conduct, the true issue of concern being expressed appears to be that in certain applications, the proposed registration policies are deemed inappropriate by some parties.

The New gTLD Program has been built based on policy advice developed in the GNSO's policy development process. The policy advice did not contain guidance on how ICANN should place restrictions on applicants' proposed registration policies, and no such restrictions were included in the Applicant Guidebook.

Defining a "generic" category of strings is a complex undertaking as strings may have many meanings and have implications for several languages. However, there are mechanisms built into the program (e.g., objection processes, GAC processes) as a means for concerns about specific applications to be considered and resolved as they arise.

Recent correspondence has expressed concerns about the potential impact on competition and consumer choice, as well as phrasing the issue in terms of potential impact on the public interest. The New gTLD Program Committee considers it important to understand all views and potential ramifications relating to "closed generic" TLDs.

Section III: Document and Resource Links

- [List of gTLD applications received](#)
- [Letter from Michele Neylon, et al. \[PDF, 56 KB\]](#)
- [Letter from Kathryn Kleiman \[PDF, 1.43 MB\]](#)
- [Toronto Public Forum:](#)
- [GAC Early Warnings](#)
- [Letter from Michele Neylon, et al. \[PDF, 362 KB\]](#)
- [Letter from Microsoft Corporation \[PDF, 267 KB\]](#)

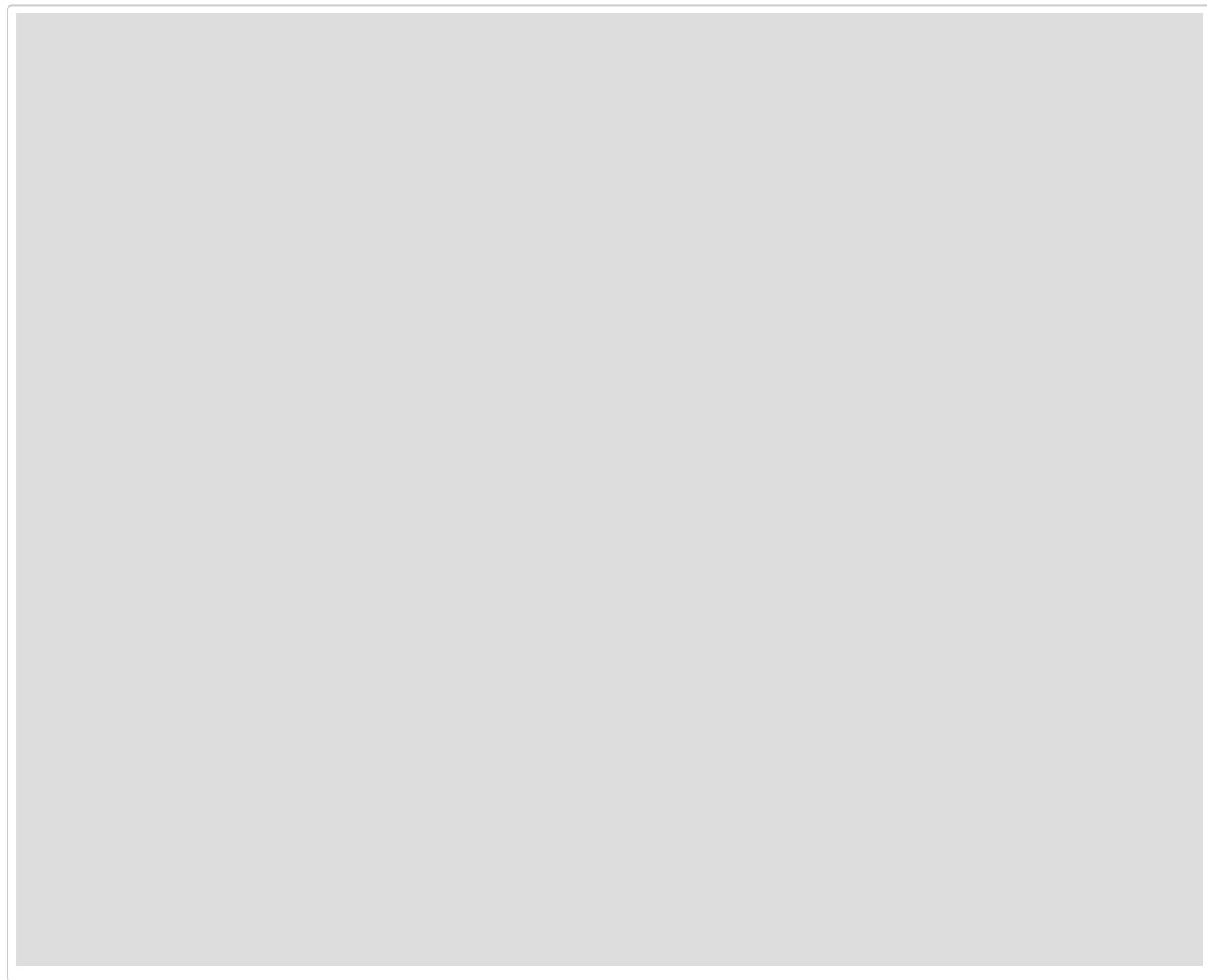
Section IV: Additional Information

None

(*) Comments submitted after the posted Close Date/Time are not guaranteed to be considered in any final summary, analysis, reporting, or decision-making that takes place once this period lapses.

FINAL VERSION TO BE SUBMITTED IF RATIFIED

Please [click here](#) to download a copy of the PDF below.



FINAL DRAFT VERSION TO BE VOTED UPON BY THE ALAC

Final: 01/03/2013 02:51 UTC

On the whole, the ALAC does not believe that unrestricted closed generics provide public benefit and would prefer that TLDs -- especially for strings representing categories -- were not allocated in a way that would lock out broad access to sub-domains. Some members of At-Large believe, on principle, that all closed generics are harmful to the public good. Others believe that, while not necessarily being beneficial to end users, closed gTLDs should be allowed as simply being consistent with existing practice for lower-level domains.

However, in developing this response to the Board's request, the ALAC found the issue to be far more nuanced than the above hard positions would suggest. There may be innovative business models that might allow a closed TLD to be in the public interest. An example might be a registry that makes 2nd level names available at no cost to anyone, but retains legal control over them. This is similar to the model used by Facebook and many blog hosting sites. Allowance should be made for applicants interested in widespread sub-domain distribution that do not require domain-name sales as a source of revenue, or for other forms of sub-domain allocation.

Whether a generic-word string is used with its generic meaning or in some other context may also be relevant. The fictitious but famous computer manufacturer, Orange Computers Inc. using the TLD ".orange" might be acceptable, while the same string used as a closed TLD by a California Orange Growers Cooperative (and not allowing access to orange producers from Florida or Mediterranean and South American countries) might well be considered unacceptable.

Allowing this nuanced approach would likely involve a case-by-case review of how a TLD will be used and how its sub-domains will be allocated. Moreover, it would require a contractual commitment to not change that model once the TLD is delegated.

In summary, the ALAC believes that completely uncontrolled use of generic words as TLDs is not something that ICANN should be supporting. However, some instances of generic word TLDs could be both reasonable and have very strong benefits of just the sort that ICANN was seeking when the TLD space was opened. Such uses should not be excluded as long as it can be established that they serve the public interest.

FIRST DRAFT SUBMITTED

This is not so much a first draft as a series of notes and comments I've created while considering the issue. I have a definite bias in my approach to this and these comments will certainly need balance with others who don't quite share my take - Evan

On the At-Large view towards "closed generic" new gTLDs.

I am undertaking to try to gel the point(s) of view of the At-Large community on the issue of what has come to be known as "closed generic gTLDs" While gTLDs are by definition generic, this issue specifically refers to the application for TLD strings that may be considered to be dictionary words (and usually, more importantly, potential names of categories or sectors of trade) that the applicant does not want to sell through the usual indirect channel of registrars (and, as applicable, registrar resellers).

What follows will start as free form notes and points, that I will hope to gel together into a statement that makes some sense. All input is welcome.

(Note: I have personally been very vocal in my lack of opposition to closed generics, but I will attempt to incorporate other views which have been more opposed. I also notice that, as I think about it, that there is a substantial difference between "lack of opposition" and "support", and that there is actually less divergence than might appear.

I will also strive to keep the assembly of comments focused on the point of view of end-users, which may be far different, in this case, from those of registrants.

I find that the attitudes towards them can be distilled into two general camps:

#1: Closed generics are harmful

Closed generics are bad for the public good, and enable monopolies on common words that should not be allowed as a matter of public policy. They will cause end-user confusion by suggesting that a single entity is the definitive authority over a whole category of goods and services (banks, beauty, books). This practise propagates existing existing bad practice by ICANN; here is an opportune time to revert a bad tradition and made the DNS responsive to the needs of the public rather than those of the domain industry.

#2: Closed generics are not great, but not harmful either

Closed generics are at worst benign and at best offer a potential for innovation and allocation of domains beyond the constraints of the traditional ICANN registry-registrar model. From a matter of public policy, ICANN allowing generic words to be privately controlled at the top level is merely consistent with allowing for private ownership of generic words at second and lower level domain names. It is the self-serving constraints on gTLD expansion asserted by existing industry that pose the greatest threat to truly disruptive use of internet domains to advance the public benefit.

Generally, my observation has been that most of At-Large -- and a substantial majority of those within ALAC and At-Large leadership who have expressed a preference -- are in line with the "not harmful" viewpoint.

Additional thoughts from Evan:

- The "harmful" PoV appears to be driven by principle while the "not harmful" PoV seems more driven by evaluating real outcomes

Additional thoughts from Carlton

- But as a fundamental fact, the ability to demonetize generic strings at this stage delegitimizes the framework of existence of the entire domain name system to date and undermines ICANN's entire existence
 - It defines an a priori determination of supportable business models for the domain name system, undeniably intervene in the market by picking winners and losers and is an impermissible selection of business models to favour
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Response by Evan to an email from Roberto Gaetano February 21:

It is my take that the public has already been conditioned to understand -- during the decades of the Internet's expansion from technical toy to universal tool -- that the ownership of domain names is not to be trusted.

The public by now EXPECTS that books.com -- or books.ANYTHING -- does not point to a generic open resource, but instead is privately owned. It does not take a huge leap from that understanding to work with/around a reality in which *.book is also privately controlled. For the life of the Internet to date, .com has been considered the "default" by browsers, search engines and the public -- and yet everything in there is held by whoever was first and/or made the highest offer.

The new gTLD program is just an escalation up one level of all the paradigms, philosophies and biases currently affecting second-level domains. The so-called "fair access" rules mean that a new gTLD cannot create innovative allocation rules that circumvent the existing registrars; the existing powers have

entrenched themselves well. But, more importantly here, what is also carried over into the TLD program is the concept of names as private property rather than public resource.

> *The real question is: in which cases should an operator have exclusive control on a subset of the domain name system, like a TLD.*

To the extent that "a subset of the domain name system" also extends to second-level domains, this question was answered decades ago: strings can be private property and are open to the highest bidder. Exceptions have been granted to trademark owners and some (but not all) geographic names, and there is a queue forming for those who want additional restrictions (the Olympics and Red Cross, treaty organizations, GAC whims. and who-knows-what else).

To complain that .books should not be privately owned while books.com should be, is IMO hypocrisy. Same regarding health.com vs .health. There may be semantic differences, and emotional differences, and the domain industry will certainly bemoan lost opportunities to sell, resell and speculate. But there are no differences that functionally matter to end users. Only newcomers to the Internet do not know that the name system is corrupt, and they learn quickly. Realizing that the ownership and use of generic TLD strings is as corrupt as the existing practice in second-level domains will be a surprise to nobody.

Internet consumers are less stupid than consumer groups believe them to be. Nobody goes to ANY domain named "books" expecting it to be a definitive resource. That will not change with the advent of the TLD. People will find their books using search engines or trusted brands such as "amazon", "google" or "kobo", at locations that are actively sought rather than found by accident.

I fully agree that end users would prefer that generic words -- a top AND lower levels -- when used as Internet strings would point to generic areas. But that time has long passed. We have nonprofits in .COM, a single government monopolizing .GOV, and casinos in .NET. The marketing for .NGO promises what I'd thought what .ORG was supposed to be in the first place. ccTLDs, which are beyond ICANN's control, are (as a whole) a mess. And second level domains have no restrictions on closed versus open, indeed the majority are closed by current definitions.

I understand and sympathize with the sentiment behind the call for an end to "closed generics". But I would not trust whatever mechanism could be concocted to judge that magically .HEALTH is a generic string worthy of special protection from private use but .SPORT is not.

After all, they're just names and pointers, not the content itself.

If consumers are confused by the rollout -- and they will be -- it will be by the sheer diversity of new names and possibly the breaking of application software -- much the same kind that is caused by, say, introducing new area codes in one's phoning area. But it will not be because of anyone pre-supposing that the .BOOKS TLD is being operated as a public service by librarians and then being shocked that it's not. We are WAY past that level of innocence, and new people coming into first time use find out quickly.

- Evan