

2020-03-09 ICANN67 Cancun- New gTLD Subsequent Procedures PDP

ICANN67 – New gTLD Subsequent Procedures PDP WG

DATE: Monday, 09 March 2020 / **TIME:** 12:15-13:45

Room: Gran Cancún 2 (Virtual)

ICANN67 Schedule link: <https://67.schedule.icann.org/meetings/1152554>

AGENDA:

1. Review Agenda/Updates to Statements of Interest
2. Discussion of Final Report Topics – see the documents at: <https://docs.google.com/document/d/1xXu7gPKibIS3Vh4MCuK6NWfeRmMolXf9VF5sO7OG4VE/edit?usp=sharing>
 - a. 2.7.3 Closed Generics
 - b. Public Interest Commitments (aka Registry Commitments) (in 2.3.2. Global Public Interest)
 - c. 2.8.1 Role of GAC Early Warnings/Advice
 - d. 2.5.4 Applicant Support
 - e. 2.9.1 Community Applications
3. AOB

NOTES & ACTIONS:

1. Updates to Statements of Interest: No updates provided.

2. Discussion of Final Report Topics – see the documents at: <https://docs.google.com/document/d/1xXu7gPKibIS3Vh4MCuK6NWfeRmMolXf9VF5sO7OG4VE/edit?usp=sharing> and attached as a PDF.

Overview:

- All of these sessions are official sessions of the SubPro WG and being conducted in a manner that we normally conduct our meetings.
- May have non-WG participants.
- The topics we are addressing are ones the WG have addressed many times already.
- Giving preference to WG members, but we'll end each subject with open comments.

2.7.3 Closed Generics

Recommendations and/or implementation guidelines

"Although the Working Group has had numerous discussions about this topic, and received extensive comments from the community, received a number of comments on this, the Working Group was not able to agree as to how to treat these applications in subsequent rounds."

-- Suggested edit: "Edit: "and received extensive comments from the community, received a number of comments on this," -- second clause is duplicative, suggestion is to delete "received a number of comments on this".

Discussion:

-- Asked for proposals to be submitted. Received a couple of proposals.

-- I disagree with this approach (and am on record previously with it) I think knowing what the status quo is will help people realized the downside of not trying to reach consensus. And we need to be consistent because it's very easy to say the SQ is the AGB but in other places, leadership says SQ is "implementation."

<QUESTION> Since there is no clear agreement on how to treat closed generics moving forward, is it the case that until a GNSO PDP ultimately (if ever) makes a specific recommendation to change their treatment, they will continue to effectively be prohibited based on the referenced Board resolution? </QUESTION>

-- Question: Where is the definition of closed generics so that people know what we are talking about? Answer: It is in the GAC Beijing Communique. They listed a number of strings and whether it is proposed to be open or closed. No extensive review of any of those applications. Some that they indicated were closed generics were not. The definition of closed generics is in Specification 11 of the Registry Agreement.

-- The Board specifically asked the WG to look at the issue of closed generics.

-- When we talk about serving a public interest goal, what are we talking about? If we look at it from the public interest of being in receipt of the content is that who are talking about?

-- Difficult to define and depends on who is defining it. The idea is that the GAC is supposed to define it. A bigger question is what do we want the DNS to be?

-- We have tried to define or discussed the public interest for a long time. We have generally come to the conclusion is that we will never have a definition, but just a set of examples of how we would recognize the public interest, or if we can't agree on that methodology then we can't come to consensus.

-- Maybe we should try to define what we want to avoid.

-- Seem to be stuck on the idea that registrants want to register every gTLD. That just doesn't seem supported by reality. It would be good if we could talk about what we want to avoid.

-- We should be looking at what is the adequate governance model for accountability for the affected community.

-- Public authorities or non-profit organizations could make better use of a closed generic than a commercial entity could. Could be decided whether the intended use is commercial or non-commercial.

Proposed questions from Anne Aikman-Scalse that could be used in an evaluation process by a panel or an objection process:

1. Does the proposed closed registry serve a public good?
2. Is the proposed mission and purpose of the registry innovative in nature?
3. What is the likely effect on competition of awarding the proposed closed registry for the same or similar goods and/or services? Is it minimal or is it vast?
4. Is there more than one proposed closed registry application for the same string and if so, how can these be evaluated for preference, e.g. scoring system.
5. Should there be restrictions on resale of the proposed Closed Registry?
6. What specific Public Interest Commitments are proposed by the registry and how can these be effectively monitored and enforced? Would additional fees be due from such a registry in order to pay for enforcement of these PICs, e.g by ICANN Compliance staff set up for this purpose?

-- Important to try to figure out a framework to make this work.

-- Example of competitive behavior: mergers are looked at in advance by the US government, but the starting point is not that all mergers are bad. The presupposition isn't that you can't do it.

-- Defining questions may help us to define what needs to be avoided.

-- To the example of mergers, there isn't a supposition that they are bad, just that there might need to be guardrails.

-- Can we identify the harms and problem solve for them? What do we think is anti-competitive or undue discrimination?

-- As an example, what if Daimler-Chrysler wants to operate .sedan? What if GM doesn't want .sedan? We are assuming that everyone else wants to have their name in .sedan.

-- Lots of industries have generic terms that represent them and that they want to be closed.

-- More concerned with the ability to take recourse action if anything went wrong, if we are able to get to some sort of compromise -- enforcement would be an element.

-- If we are talking about anti-competitiveness you can put in specific guardrails -- that is a problem we can solve.

-- We are talking about genus versus species.

-- Everyone is worried about consumer choice, but some TLDs would like to focus on consumer trust and innovation.