01 December 2023

Subject: Submission of Outcomes Report from the Facilitated Dialogue on Closed Generic gTLDs

Nicolas Caballero, GAC Chair; Gregory DiBiase, GNSO Chair; Jonathan Zuck, ALAC Chair; Tripti Sinha, ICANN Board Chair

Dear Tripti, Nico, Greg, and Jonathan,

We are writing today to submit the Outcomes Report following work conducted by the At-Large, GAC, and GNSO participants to the Facilitated Dialogue on Closed Generics gTLDs. As you are aware, this comprehensive report was requested by the ALAC, GAC, and GNSO Chairs in their joint letter (07 August 2023) to the appointed participants to the Facilitated Dialogue.

This report aims to encapsulate the process, deliberations, feedback, and outcomes of the group's collaborative efforts, providing a valuable record of the participants' work from 07 November 2022 to 15 November 2023. As noted in the Chairs' joint letter to the group, the Outcomes Report is also aimed to set the basis for any future policy work – if any such work is envisaged by the ICANN community in the future.

Please find attached the Outcomes Report for circulation to the Board and your respective communities. This Outcomes Report is also published on the Facilitated Dialogue wiki page here.

Sincerely,

On behalf of the Policy staff team supporting the Facilitated Dialogue on Closed Generic gTLDs

The Facilitated Dialogue on Closed Generic gTLDs Outcomes Report

01 December 2023

Executive Summary

At the invitation of the ICANN Board, the GAC, GNSO and ALAC agreed to initiate a Facilitated Dialogue on Closed Generic gTLDs to explore a mutually agreeable path toward identifying and handling closed generic gTLD applications for the next round of new gTLDs. To this end, the appointed representatives to the Facilitated Dialogue from the GAC, GNSO, and ALAC deliberated and collaborated extensively between November 2022 and May 2023 to produce a Draft Framework for Closed Generic gTLDs on 08 June 2023 for the consideration of the wider community. Feedback received from the community, while greatly appreciative of the hard work of the Dialogue group, has revealed there are fundamental issues with the Draft Framework which would require resolution before a final framework is developed that can be considered acceptable to the wider community as the basis for a GNSO policy development process, and would not fit within the Facilitated Dialogue's current Q3 2023 timeframe.

Based on community feedback on the Draft Framework, Dialogue participants expressed concerns about the likelihood of achieving agreement on a final framework and whether the Dialogue, as scoped, is the most appropriate venue to resolve the fundamental issues noted in the community feedback. Dialogue participants also noted that the time and effort needed to fully address the community's feedback would potentially delay the delivery of a final framework, and thus extend the time needed to conduct any subsequent policy process ahead of the launch of the next round of new gTLDs. At the request of the participants, the Chairs of the GNSO, GAC, and ALAC met to discuss these concerns in light of the community feedback, as well as the need to prioritize the community's work, the overall community workload, and the need to ensure that community and org time and resources are used optimally. The Chairs also took into account the potentially diminished demand from the community for closed generic gTLDs, particularly if obtaining such a gTLD will entail engaging in a complex process with complicated requirements.

In a joint message sent to the Dialogue group on 07 August 2023, the GAC, GNSO, and ALAC Chairs unanimously concluded that (1) closed generic gTLDs should not be a dependency for the next round; (2) pending a community-developed consensus policy, they should advise the Board to maintain the position from the 2012 round to the effect that "any applications seeking to impose exclusive registry access for 'generic strings' to a single person or entity and/or that person's or entity's Affiliates (as defined in Section 2.9(c) of the Base gTLD Registry Agreement) should not proceed"[1]; and (3) should the community decide to conduct

[1] For context, the 21 June 2015 Board Resolution established that Exclusive (Closed) Generic gTLD applicants of the 2012 round that were prevailing in or not involved in contention resolution *"must elect within a reasonably limited time to either:*

a. submit a change request to no longer be an exclusive generic TLD, and sign the current form of the New gTLD Registry Agreement;

future policy work on this issue, that work should be based on what the Dialogue has accomplished to date. The three Chairs' response to the Dialogue group's concerns was thus to conclude that it is not necessary at this stage to continue the Dialogue for producing a final framework, nor is it necessary to launch any additional policy work for closed generic gTLDs at this time. However, as maintaining a full record of the Dialogue group's work will be important should this topic be taken up again in the future, the Chairs requested that the group develop and publish this Outcomes Report.

Background

To date, there is no explicit policy on closed generic gTLDs, which have generally been understood to describe gTLDs of a "generic string" involving exclusive registry access for a single person or entity and/or their "Affiliates" (as defined in Specification 11, Section 3(d) and Section 2.9(c) of the Base gTLD Registry Agreement). Previous attempts to resolve this policy gap, including by the New gTLD Subsequent Procedures (SubPro) Working Group, yielded informative discourse and a range of community perspectives, but the community was ultimately unable to achieve a consensus approach for allowing or disallowing closed generic gTLDs.

Seeking to ensure that progress on this policy topic is the product of community consensus, in March 2022 the ICANN Board sent a letter and framing paper to the GAC and GNSO Council that proposed a Facilitated Dialogue between the GAC and the GNSO. The GAC and the GNSO agreed to enter into such a Dialogue based essentially on the scope outlined by the Board, and they jointly invited the ALAC to participate as well. The objective of the Dialogue was for the GAC, GNSO, and ALAC to explore a mutually agreeable way forward on closed generic gTLDs and develop a workable framework for managing such applications in the next round that will form the basis of a GNSO policy process involving the wider community. If, however, the Dialogue did not result in an agreed framework, the question as to how to handle any applications for closed generic gTLDs in the next round would be a matter for decision by the Board. As such, since the Facilitated Dialogue ultimately did not result in an agreed final framework, there continues to be no community-developed consensus policy for closed generic gTLDs, and the Board will need to make a decision as to how to handle closed generic gTLD applications in future gTLD rounds.

Outcomes

The Facilitated Dialogue Process

It is important to note that the GAC-GNSO-ALAC Facilitated Dialogue was not formally chartered as a GNSO Policy Development Process (PDP) working group. Its objectives and scope were not to produce consensus policy recommendations but to seek to develop a framework that could form the substantive basis for subsequent policy development work. As

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b. maintain their plan to operate an exclusive generic TLD. As a result, their application will be deferred to the next round of the New gTLD Program, subject to rules developed for the next round, to allow time for the GNSO to develop policy advice concerning exclusive generic TLDs; or

c. withdraw their application for a refund consistent with the refund schedule in the Applicant Guidebook."

such, from the start it was clear that the group should be free to explore methods, structures and techniques that enable brainstorming and a collaborative approach toward solutions that do not necessarily require individual participants to represent or advocate for specific interests. In this regard, the Board proposed a neutral facilitator from ICANN org to moderate the Dialogue, whom the GAC and GNSO Council both approved. To keep the group small and nimble while ensuring equitable participation from the three groups that agreed to the effort, the Dialogue group was composed of six representatives from the various stakeholder groups in the GNSO, six representatives from the GAC, and one member with one alternate from the ALAC, who each sought to engage in the Dialogue as uniquely experienced individuals rather than solely as representatives of their community groups.

To help build trust and establish parameters for a productive dialogue, recognizing that closed generic gTLDs have been a long-standing and complicated issue, the participants drafted and agreed to certain commitments made to one another and to the Dialogue process. As part of these good faith commitments, the participants decided to operate under a modified Chatham House Rule, acknowledging that they could still communicate high-level updates to their respective groups and that summary notes would be published periodically for sharing with their groups (see Annex 1). In practice, the feedback received from the community indicated some concerns about the way that the group decided to conduct its work, which contrasted with what the community had come to expect from a typical PDP, leading to a perceived sense of secrecy around the Facilitated Dialogue. Dialogue participants acknowledge that this was an important lesson learned, but believe that it is also important to note that many participants found the Chatham House Rule and its working methods helpful in fostering open and frank discussions in pursuit of a workable solution for closed generic gTLDs.

The Facilitated Dialogue group held their meetings virtually on a weekly basis beginning in November 2022, meeting in-person for a dedicated two-day workshop in January 2022 and again during a closed session at ICANN76 in Cancún. Several participants expressed that their in-person workshop was particularly helpful for productive discussion and collaboration. Throughout their deliberations, participants engaged in brainstorming exercises, asynchronous work, plenary/breakout sessions, and discussed hypothetical use case scenarios to identify the potential requirements of closed generic gTLDs. The group agreed that the most important requirement was that closed generic gTLDs must serve a public interest goal, as advised by the GAC in its 2013 Beijing Communique. The group held numerous discussions and examined several definitions and perspectives regarding the “public interest”. It also used relevant aspects of the Global Public Interest framework that had been developed by the Board and community, but ultimately did not issue an explicit definition as it agreed that the “public interest” is a broad and nuanced concept. As an alternative, participants proposed various ideas to safeguard the potential benefits to the public interest and also mitigate the potential threats thereto.

The Dialogue group’s discussions generally traced the life cycle of a closed generic gTLD, from the application phase, through its evaluation, then finally to contracting (if successful) and post-delegation requirements. Each phase of the life cycle presented different questions and challenges with regard to how the group believed closed generic gTLDs should be handled. As participants gradually converged on similar needs or approaches, these were documented as possible elements of a draft framework. Before finalizing these shared understandings for the framework, each participant identified any specific “red line” concerns, meaning they could not support the framework as a whole if a particular element was either included or excluded. This exercise prompted much debate, as well as compromise, as various framework elements were updated or removed in an effort to reach the broadest consensus from the group. The result was a Draft Framework document which contained significant

compromises but was nevertheless an important milestone for collectively progressing this long-standing policy issue.

Draft Framework for Closed Generic gTLDs

The Draft Framework for Closed Generic gTLDs was intended as a preliminary blueprint that, with community support, could be finalized and then taken further in an appropriate GNSO policy process. While the Draft Framework contains several detailed criteria, the framework remains largely at a high-level, allowing some details to be addressed through subsequent policy or implementation work. For example, as part of a baseline understanding of how "closed" this new type of gTLD should be, the group broadly agreed that there are other relationships and entities beyond the current narrow definition of "Affiliates" that must also be included as potential registrants, such as members of a trade association, federation, or consortium. The Draft Framework also notes that a future policy group taking on this issue may identify additional relationships and entities for inclusion. The group chose not to propose updating existing contractual definitions (e.g. "Affiliates") so as not to impact other types of gTLDs.

Overall, the Draft Framework provides a number of potential application, evaluation, and post-delegation criteria unique to closed generic gTLDs. It is the product of months of deliberation and consensus-building efforts across different community perspectives and opinions. While not every question raised during the Facilitated Dialogue was answered by the group or its framework, the remaining questions (which included some of the most difficult and controversial questions) were included in an annex of the Draft Framework for a complete record. It should also be noted that while the participants of the Facilitated Dialogue worked hard to find common ground on many difficult issues, compromise was often necessary to make progress. As such, from the participants' perspective, not all of the elements within the Draft Framework represent their full agreement or that of their community groups. Rather, participants agreed to cautiously include some framework elements in order to seek input from the broader community. Ultimately it was understood that the community's feedback would be key in determining whether the Draft Framework, or any parts thereof, was workable and acceptable to the wider community as a basis for more detailed policy work. Without the clear support of the community, particularly from the GAC, GNSO, and ALAC, the preliminary work of the Facilitated Dialogue could not have proceeded to a formal policy development process.

Community Feedback

The Dialogue group shared its Draft Framework for the community's feedback shortly before the ICANN77 Policy Forum in Washington D.C., during which it hosted two public sessions to explain their work and answer questions from the community. These session recordings can be found in Annex 1. Over the course of approximately one month, the group informed and solicited feedback from the community via their Dialogue representatives, the ICANN77 public sessions, and the weekly ICANN Community Digest. Interested groups or individuals could send their feedback to a dedicated email address, and their submission would be publicly archived on the Facilitated Dialogue wiki page. The Dialogue group received seven feedback submissions, namely from Tucows Domains, gTLD Registries Stakeholder Group (RySG), ISPs and Connectivity Providers Constituency (ISPCP), Governmental Advisory Committee (GAC), ICANN Business Constituency (BC), At-Large Advisory Committee (ALAC), and ICANN org, Global Domains and Strategy. To read the entirety of these feedback submissions, please refer to Annex 3.

Based on the feedback received from the community, the Dialogue participants determined that there are likely fundamental issues with the current Draft Framework. For example, several community groups shared concerns with the overall complexity of the proposed framework, the potential for system bias, as well as a lack of clarity around particular definitions, such as “the public interest”, “closed”, and “representativeness”. Another issue pertained to the prospective applicant’s commitment to “non anti-competitive behavior”, which was a compromise solution from the Dialogue group’s deliberations. Multiple community groups shared concerns about the efficacy and enforceability of this requirement and others. Moreover, the concept of a closed generic gTLD was raised by the GAC as a significant concern for market/competition and human rights protections.

Dialogue participants voiced a major concern about the likelihood that these issues are irreconcilable without the group having to revisit previous discussions and compromises and making fundamental changes to the Draft Framework. Indeed, it is possible that even with additional efforts, these issues might not be reconciled. Before engaging in such deliberations, the participants agreed to jointly share their concerns with the three Chairs, and additionally invite the feedback authors to engage with the group should they wish to provide further clarity on their feedback for completeness of the record.

Conclusion

As described above, the Chairs of the GAC, GNSO, and ALAC have affirmed that there appears to be minimal demand from the community for closed generic gTLDs and resolving this issue should not be a dependency for or a reason to delay the next round of new gTLDs. Limited volunteer time and resources must also be considered in view of the overall community workload. With all these considerations in mind, the Chairs unanimously decided to propose that closed generic gTLDs not be considered a dependency for the next round. The ALAC and GAC Chairs jointly sent a letter to the Board on 13 October 2023, and the GNSO Council sent its letter to the Board on 21 October 2023. The GAC and ALAC followed up on their Chairs' letter with formal Advice to the Board[2][3]. The question of how to handle applications for closed generic gTLDs in the next round is thus one for the Board to answer, in the absence of a community-developed consensus policy on this topic.

The participants in the Facilitated Dialogue group support their Chairs’ recommendation not to continue with the dialogue. In the event that the community may decide in the future to take up this topic as a policy matter, the Dialogue participants emphasize that the Draft Framework was the result of good-faith discussion and compromises for the purpose of reaching a preliminary document for the community to provide feedback on. As such, in its current state the Draft Framework does not represent a final agreed outcome of the Dialogue nor an approach that has been broadly endorsed by the community. The participants also recognize that although it could not ultimately achieve an agreed framework, the Facilitated Dialogue was truly a multistakeholder effort and a success in terms of collegial spirit, good work, and cooperation. The work of the Dialogue group to date, as well as the feedback contributions from the community, are further memorialized in Annexes 1 and 3 below.

[2] ICANN78 Hamburg GAC Communique: https://gac.icann.org/contentMigrated/icann78-hamburg-communique
[3] ALAC Closed Generics Advice to the Board: https://atlarge.icann.org/en/advice_statements/13907

Annex 1

To learn about the background of the Facilitated Dialogue on Closed Generic gTLDs, the discussions held during their weekly meetings, and other information relating to the work, please refer to the resources linked below.

Resource	Link
Wiki page: GNSO/GAC Facilitated Dialogue on Closed Generics	https://community.icann.org/display/GFDOCG
Board letter inviting the GNSO Council & GAC Leadership to engage in a Facilitated Dialogue (06 March 2022) and accompanying Framing Paper (08 March 2022)	https://www.icann.org/en/system/files/correspondence/botterman-to-ismail-fouquart-06mar22-en.pdf
Repository of Board and Community Correspondence regarding Closed Generic gTLDs and the Facilitated Dialogue (March 2013 - July 2022)	https://community.icann.org/pages/viewpage.action?pageId=222269371
Problem Statement and Briefing Paper prepared by staff to frame the Dialogue (05 September 2022)	https://community.icann.org/pages/viewpage.action?pageId=218464722
Summary Notes circulated to the Community (24 January, 03 February, 07 March 2023)	https://community.icann.org/display/GFDOCG/Summary+Notes
ICANN77 Joint Sessions: ALAC, GNSO, and GAC Facilitated Dialogue on Closed Generic gTLDs (12, 13 June 2023)	https://icann77.sched.com/event/1NMtm https://icann77.sched.com/event/1NMty
Draft Framework for Closed Generic gTLDs (08 June 2023)	https://community.icann.org/display/GFDOCG/Draft+Framework+for+Closed+Generic+gTLDs?preview=/244944418/244944420/Draft%20Framework%20for%20Closed%20Generic%20gTLDs.pdf
Joint message from the GAC, GNSO, and ALAC Chairs in response to questions from the Facilitated Dialogue participants (07 August 2023)	https://community.icann.org/display/GFDOCG/Outcomes+Report?preview=/262406228/262406229/MessagefromALACGACGNSOChairstoClosedGenericsFacilitatedDialogueParticipants-FINAL-5August2023002-0001.pdf
Joint Letter from the GAC Chair and ALAC Chair to the ICANN Board (13 October 2023)	https://www.icann.org/en/system/files/correspondence/cabellero-zuck-to-sinha-13oct23-en.pdf

Letter from the GNSO Chair to the ICANN Board (21 October 2023)	https://www.icann.org/en/system/files/correspondence/ducos-to-sinha-21oct23-en.pdf
List of Meetings, Agendas, and high-level Meeting Notes (07 November 2022 - 15 November 2023)	https://community.icann.org/display/GFDOCG/Meetings
Participant Evaluation of the Facilitated Dialogue Process (15 November 2023)	https://community.icann.org/display/GFDOCG/Participant+Evaluation+of+the+Facilitated+Dialogue+Process?preview=/284033190/284033222/Participant%20Evaluation%20of%20the%20Closed%20Generics%20Facilitated%20Dialogue%20Process.pdf

Annex 2

Members of the Facilitated Dialogue on Closed Generic gTLDs, including participants, Board liaisons, and supporting staff, are provided in the table below.

Name	Affiliation
Arnaud Franquinet	GNSO
Jeff Neuman	GNSO
John McElwaine	GNSO
Kathy Kleiman	GNSO
Philippe Fouquart	GNSO
Sophie Hey	GNSO
Greg Shatan	ALAC
Alan Greenberg	ALAC - Alternate
Aderonke Adeniyi (Sola-Ogunsola)	GAC
Ian Sheldon	GAC
Jason Merritt	GAC
Jorge Cancio	GAC

Manal Ismail	GAC
Nigel Hickson	GAC
Patricio Poblete	Board Liaison
Alan Barrett	Board Liaison - Alternate
Melissa Peters Allgood	ICANN staff - Neutral Facilitator
Benedetta Rossi	ICANN staff
Christian Wheeler	ICANN staff
Emily Barabas	ICANN staff
Mary Wong	ICANN staff
Steve Chan	ICANN staff
Terri Agnew	ICANN staff

Annex 3

The feedback submissions on the Draft Framework for Closed Generic gTLDs are attached following this page in the order they were received. This feedback may also be found here.

ICANN staff supporting the Facilitated Dialogue also organized these inputs into a Community Feedback Review Tool for purposes of the group's final discussions, however this tool would ultimately not be utilized before the conclusion of the Dialogue.

tucows/domains

14 July 2023

Tucows Response to the Draft Framework for Closed Generic gTLDs

Tucows appreciates the work of the participants in the GNSO/GAC Facilitated Dialogue on Closed Generic gTLDs and ICANN Org, and the opportunity to comment on the Draft Framework.

Tucows is a strong supporter of the free and open Internet and opposes policy that creates inequity or inaccessibility for Internet users. This perspective leads Tucows to a cautious approach to Closed Generic gTLDs, as Closed Generic gTLDs unfairly restrict people and businesses which could benefit from registering or accessing a domain in the TLD.

The Framework attempts admirably to address these concerns—but with limited success. The requirement that a Closed Generic TLD must serve the public interest is valuable but difficult to enforce. The requirement that an applicant for a Closed Generic TLD be the representative of the relevant industry or group can lead to multiple valid competing representatives claiming priority—and only one can be granted the delegation. The potential efficacy of an alternative requirement to commit contractually to “non anti-competitive behaviour” is similarly unclear, since a Closed Generic TLD is inherently monopolistic and ICANN is ill-suited to adjudicating such disputes. It may be worth considering the broader use of Community TLDs to represent and provide space for interest groups or communities, rather than Closed Generic TLDs.

Tucows supports Policy development relating to Closed Generic gTLDs so that the ICANN Community can set requirements with full multistakeholder participation and representation. We urge members of an eventual PDP WG to carefully consider how to protect unrestricted competition and ensure broad participation in any Closed Generic TLD.

Registries Stakeholder Group Statement

RySG feedback on the Draft Framework for Closed Generic gTLDs

Date statement submitted: 14 July 2023

Background[1]

The ICANN community participants in the Closed Generics Facilitated Dialogue are requesting feedback on a draft frameworkthat can underpin additional policy work for handling closed generic gTLDs in future rounds of gTLDs. Feedback on the draft framework will inform the development of a final framework.

Documents

- Draft Framework for Closed Generic gTLDs.pdf

Registries Stakeholder Group feedback on the Draft Framework for Closed Generic gTLDs

The Registries Stakeholder Group (RySG) welcomes the opportunity to provide feedback on the *Draft Framework for Closed Generic gTLDs* and appreciates the time and effort the participants to the Facilitated Dialogue committed to developing the framework.

In addition to concerns noted on the basic definition of a closed generic, we also note that this is not a policy development process. While we expect this work could provide important input into a policy development process, we note that the GNSO PDP must be undertaken if there is to indeed be policy developed on this issue.

We note the comments we are contributing are based upon the understanding that this is a Board directed process and not a formal policy development process. Our feedback is structured as follows: overarching comments, noting areas that are unclear and could present broad scope concerns, and practical implementation issues.

[1] Background: intended to provide brief context for the comment – it is not a summary of the subject document.

I. Overarching comments

A definition of what constitutes a Closed Generic has not been proposed in the Framework, nor appears to be agreed upon. While the Problem Statement & Briefing Paper for the work of the Facilitated Dialogue provides a 'proposed definition', it's unclear from the Draft Framework if it formally adopts that definition as the basis of its work.[2] An agreed upon definition of a Closed Generic TLD is an essential component before moving the concept to policy development.

In addition, while we recognize the work of the Facilitated Dialogue as an important input to this discussion, we also emphasise that if the Draft Framework is to be considered further, it must be subject to the appropriate policy development process.

Further overarching concerns surround how lack of clarity in the Draft Framework could impact scope concerns fundamental to ICANN's mission. The Draft Framework suggests that a closed generic applicant would commit that the TLD will not be used for fraudulent or illegal activity, which raises questions about how a TLD could represent that in the evaluation process as well as how, and what party, would enforce such a requirement. Another potential concern is the discussion of defining the 'public interest' by the Draft Framework or potential applicants. This has been the subject of long discussion across the Community and any potential definition in the Draft Framework or via an application could set a definitional precedent not vetted by the Community. In addition, criteria outlined in the Draft Framework that applicants commit to certain anti-competitive behavior could put ICANN in the position of enforcing on issues related to competition. These issues are outside the scope of the Facilitated Dialogue and would require policy development processes. Additionally, they raise questions as to the fundamental scope of ICANN's mission.

Finally, the proposed application and evaluation procedures are cumbersome and lack clarity to allow effective implementation. For example, employing a scoring system to evaluate closed generic gTLD applications would likely lead to unnecessary arguments that will only delay the implementation of a closed generic application process. Criteria that would allow an applicant to either meet all of the closed generic criteria set out in the framework or not is much less ambiguous.

II. Implementation Issues

We note that adhering to the recommendations set out by the SubPro Working Group in this closed generics framework is important so as to avoid protracted relitigation of issues that have already been thoroughly considered, debated, and decided.[3] In addition, we note that Section 2 must be clear to the extent it addresses the criteria for closed generics.

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[2] Problem Statement & Briefing Paper,"Closed generic" gTLDs, also sometimes described as "gTLDs with exclusive registry access", are understood to be gTLDs representing a string that is a generic name or term under which domains are registered and usable exclusively by the registry operator or its affiliates. Specifically, the Base Registry Agreement for the 2012 New gTLD Program, Specification 11, section 3(d) states that: "a '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." A Registry Operator of a 'generic string' top-level domain (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).As part of their initial discussions, dialogue participants may want to consider whether the above-noted definitions are appropriate or whether additional clarification may be needed with respect to the definitions of "closed," "generic," and "exclusive registry access" in the gTLD context.

[3] Draft Framework: *1. The application process for closed generic gTLDs will, to the greatest extent possible, be the same as for standard gTLD applications, but there will be additional criteria for closed generic gTLD applications., 2. The criteria for closed*

In addition, remaining consistent with SubPro Recommendations 12.4-12.9, which call for the Applicant Guidebook to be clear and drafted with users in mind is important. Providing straightforward, thorough instruction in advance is important for predictability in any future application process that would be commercially feasible for applicants to participate in.

Lastly, modifying the language in Section 2 as follows would clarify the timing for publishing the closed generic criteria: "The criteria for closed generic gTLDs must be clear and published ~~in the final Applicant Guidebook~~ in advance of ~~the~~ **an** application window **that allows for closed generic gTLDs** ~~for a new gTLD round~~."

III. Concerns with commercial feasibility

We believe there has been a misunderstanding of the focus of the work on these issues. Commercial issues are out of scope for the work of this group and the commitments suggested and following a formal policy process, could be impractical when it comes to possible future enforcement considering ICANN's scope and mission.

For example, with respect to Sections 11 and 12 of the Draft Framework, the framework would be more in line with SubPro recommendation 12.4 regarding clarity for users and thus be more commercially feasible if applicants were asked to explicitly identify an application as requesting a closed generic gTLD. An explicit identification would also aid evaluators in assessing these applications. The following two suggestions would add clarity and bring the Draft Framework in line with policy recommendations:

1. Add a new section before the current Section 4 of the Draft Framework which says: "Self-identify [e.g., via a check box] that this application is a request for a closed generic gTLD."

2. Move Section 12 after the new section suggested directly above and before the current Section 4 and make the following redlined modifications for clarity: "**(1) Indicate the language of the generic term, and (2) e**~~E~~xplain what ~~types of goods, services, groups, organizations, products, things, etc. are described by~~ the generic term **describes** ~~for which the applicant is applying~~.

Sections 13 and 13.a of the Draft Framework are likewise not in line with SubPro Recommendation 12.4. At best, these sections ask an applicant to predict why external parties may want to object to its closed generic application. At worst, these sections require an applicant to supply external parties with reasons to object to its application. An AGB that directs applicants to thoroughly lay out the proposed use and public interest benefit of the closed generic gTLD would be sufficiently in line with SubPro Recommendations. We also note that the SubPro Recommendations already provide ample opportunity for public comments and objections (*see* Topic 30 GAC Early Warnings and Topic 28 Role of Application Comment; *see also* Recommendations 28.1, 28.11 ("Applicants must have a clear, consistent, and fair opportunity to respond to public comments . . . .")).

Finally, to the extent Sections and 19 and 19.a are proposing that a separate panel be selected to assess each individual closed generic application, this will likely lead to protracted litigation and debate. To avoid this, the Draft Framework should (1) make clear that there will be one panel assessing all closed generic gTLD applications, and (2) remove the phrase "consisting of suitably qualified individuals." The fact that the arbiters must be qualified should be implied, and including this language in the Framework will lead to unnecessary debate and delay at this early stage of the framing process.

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generic gTLDs must be clear and published in the final Applicant Guidebook in advance of the application window for a new gTLD round.

To remedy this, the Draft Framework could combine and modify Sections 19 and 19.a as follows:

> 19. The evaluation of **all** closed generic gTLD applications must be performed by **one provider** ~~a panel consisting of suitably-qualified individuals.~~ **that will**
> ~~19.a. The evaluation panel must assess each individual~~ **all** closed generic gTLD application**s** to determine if ~~it~~ **they** ~~sufficiently~~ meet~~s~~ **all of** the criteria to pass evaluation as a closed generic gTLD.

IV. Conclusion

We recognize the work that has gone into developing this draft document and have attempted to provide feedback in a constructive and clear manner. We hope the team is able to address those areas where the language of the Draft Framework strays into issues subject policy development processes and those for which the practicality of implementation could be impacted by ICANN's scope and mission.

ICANN | ISPCP

Internet Service Providers & Connectivity Providers

The Internet Service Providers & Connectivity Providers Constituency welcomes this opportunity of commenting on the Draft Framework for Closed Generic gTLDs.

The ISPCP Constituency commends the participants of the GNSO, the GAC and the ALAC in the Dialogue for producing a balanced approach of the various views expressed in the community on this topic. The Constituency agrees that it should be the basis for future policy work to develop a consensus policy for closed generic gTLDs, and in this respect should constitute the first step towards answering the Board's request and the associated framing paper on the issue.

Regarding the overarching principles developed in the framework, the ISPCP supports the notion that a closed generic gTLD should serve both the global public interest and *a* public interest of a single community. The ISPCP also endorses the principle of consistency with the processes of application, evaluation and delegation developed by the SubPro WG.

For the next steps and given the complexity of the topic and the variety of potential use cases, the ISPCP would encourage the scoping effort to further enhance the predictability of the application process, be it through a scoring system or other means. Whilst it may be unreasonable to expect that the application process be straightforward and easily automated, it would be equally unacceptable for two similar applications to lead to different results as it may put ICANN's liability and credibility at risk.

The ISPCP notes that the contractual commitment to "non anti-competitive behavior" subject to the alternative track of a closed generic gTLD application may be challenging to enforce once the TLD is delegated and the Constituency would encourage the policy work to further develop enforcement principles as they relate to this particular commitment. More generally, the Constituency concurs with the group that the notion of enforceability is central to a public interest goal of a closed generic TLD being met over time. Although it was beyond the mandate of the Dialogue (and possibly the mandate of the policy effort to come next), the ISPCP considers this topic to be critical, and a prerequisite for the policy to be developed to be viable, and recommends that a dedicated study be conducted on this topic in parallel to the policy effort rather than deferring the analysis to implementation.

The Constituency, however, applauds the systematic and detailed process of evaluation, showcasing a transparent and structured mode of application process.

The ISPCP finally notes that evaluating the genericity of a term in non-English languages (IDN or not) may be challenging for an evaluation process that is likely to rely heavily on evaluation panels. Noting that around 50% of websites use non-English languages, the process must ensure that all languages can be treated equally.

The ISPCP again thanks the members of the Dialogue for their work, supports the framework as it has been developed and is looking forward to the next steps on this topic.

ICANN | GAC
Governmental Advisory Committee

Distribution	Public
Date	15 July 2023

Governmental Advisory Committee (GAC) Comment on the Draft Framework for Closed Generics

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Introduction

The GAC welcomes the efforts made by the members of the facilitated dialogue on Closed Generic gTLDs from the GAC, GNSO and ALAC. The GAC expresses strong appreciation for the amount of thought and work put into the present Draft Framework for Closed Generic gTLDs (Draft Framework) and for the opportunity to provide input on the Draft Framework.

In line with ICANN77 GAC Communiqué, the GAC reiterates concerns "*over the lack of convincing resolutions for preliminary yet fundamental matters in the Draft Framework*" in particular on "*competition issues, the overall assessment of the value of Closed Generic gTLDs*

for the Internet, their potential negative economic and social impacts, and the evaluation panel". Some of these challenges, and especially those related to competition issues, have only increased in the last decade, due to the concentration of the digital markets and assets in fewer hands. The GAC wishes to prevent closed generics from accelerating this phenomenon and to avoid privatization or nationalization of important sections of the open digital space without having a clear understanding of the overall benefits and risks involved.

The GAC further reiterates that, as per the ICANN77 GAC Communiqué, *"additional steps, including the possible initiation of a GNSO policy process, should only be undertaken if in the final draft specific solutions are proposed and the above-mentioned issues are adequately addressed*", and that "*no policy option, including the prohibition of Closed Generic gTLDs, should be excluded if a way forward that satisfies GAC concerns is not found. In any event, the framework will be subject to the GAC consensus agreement*".

Overarching Comments

The GAC notes that comments made at the various stages of the process in the Draft Framework do not necessarily signify the GAC's agreement with the principle of Closed Generic gTLDs. The GAC reiterates that it notes "*that the issue of closed generics has generated considerable debate and diverse views. Broadly speaking, while the GAC does not believe closed generics are necessarily inherently anti-competitive, it considers that restricting common generic strings for the exclusive use of a single entity may have unintended consequences, including a negative impact on competition, if appropriate guardrails are not established*."[1]

In terms of specifics regarding the Draft Framework, the GAC wishes to highlight some areas of concerns for the facilitated dialogue group's consideration, which will be further discussed in this comment. The first area identified by the GAC to be explored further is the lack of definitions of key concepts such as public interest or representativeness, which the Draft Framework is based on. The GAC notes that the lack of such definitions may hinder understanding how the framework could work in practice, and may indicate a difficulty in agreeing on such important concepts. GAC members consider that basic definitions should be included in the Framework. At the same time GAC members are mindful that a working definition of such concepts, which is necessary to make immediate progresses on this exercise, may be further detailed in the potential subsequent Policy Development phase, but wishes to note that attributing the interpretation of these concepts to the evaluation panel presented in the Draft Framework would not be an adequate response to the policy challenges raised by

[1] GAC Comment on Subsequent Rounds for New gTLDs Draft Final Report Public Comment Proceeding: https://gac.icann.org/file-asset/GAC%20Subpro%20Final%20Report%20Collective%20Comment%20-%20FINAL.pdf

Closed Generic gTLDs. This may entail failure to citizens and communities since governments would be delegating to unknown individuals the responsibility of discussions and decisions that relate to core societal values. Furthermore, the GAC notes that evaluating whether a proposed Closed Generic gTLD would meet a public interest goal, as proposed in the Draft Framework, may likely create significant costs for the ICANN community with no corresponding benefit, as in most cases, a Closed Generic gTLD would serve only the private interests of its operator without benefits to the public, unless a clear case is made and confirmed during the application and evaluation phases.

Concrete and well-explained use cases are the second area for the facilitated dialogue group to further explore, to show the value of delegating Closed Generic gTLDs beyond any reasonable doubt, illustrating their benefits for individuals and communities. GAC members note that while the Draft Framework includes a few types of organizations that potentially might be interested in applying for Closed Generic gTLDs (such as the International Red Cross and other similar not-for-profit international organizations), it may also benefit from the addition of examples involving commercial and for-profit entities.

The GAC appreciates the opportunity to provide input to this Draft Framework and thanks the facilitated dialogue group for their consideration while reviewing the input received before continuing with the next steps on this topic.

GAC Input on Specific Elements of the Draft Framework

1. GAC Input on the Application and Application Process

The GAC believes that important clarifications would be needed for the application/application process part of the Draft Framework to respond to GAC's concerns as expressed in the ICANN76 and ICANN77 Communiqués and statements mentioned above.

The GAC understands the desire to keep the application process simple and in line with other gTLDs (**element 1)**, however it wishes to note that Closed Generic gTLDs are a distinctively new category that might present high socio-economic risks and implications from a policy perspective. The attribution of Closed Generic gTLDs, and even more so the attribution to the wrong candidates, could have severe consequences not only from a competition/market but also from human rights perspective underlying the open Internet, with the privatization or closed nationalization of entire sections of the Internet information space based on what is a currently undefined "public interest". Therefore, the delegation of Closed Generic gTLDs, if at all

agreed by the ICANN community, should follow a specific and carefully thought-through application process and should not be a simple expansion of the general gTLDs procedures.

In view of the specific features and risks raised by Closed Generic gTLDs, the application process should not merely replicate that for standard gTLDs. In addition to the "additional" criteria, "*criteria specific to the risks inherent in closed generics*" should be specified (**element 1**). All the information requested from each applicant should include a high degree of precision, which implies reinforcing the language. For example, "*abstract or generalized statements will not be sufficient for evaluation*" (**element 3.a**). The precision required in applications necessitates definition of the public interest, the scope of which is not at the discretion of the application (**elements 4; 5; 7; 8; 9; 10; 13; 15**) and precisely defining it clearly in the Draft Framework.

While the GAC appreciates that the burden of proof to establish eligibility falls on the applicant (**element 3**), this approach requires stronger definitions of key terms and requirements within the present Draft Framework as to leave no space for unintentional or intentional wrong interpretations from the applicants. Additionally, for consistency with **element 21.a.**, some guiding questions should be made available for applicants to answer as a basis for evaluation. If relevant, more information can be provided by the applicant.

On framework **elements 4, 7, and 8**, the GAC notes that the concept of "public interest" must not only be defined in the framework but also the adopted definition should be workable/operationalizable. This definition is crucial as the Draft Framework relies on this notion to ensure that Closed Generic gTLDs add value to broader or smaller communities. Otherwise, the GAC notes there could be no convincing rationale for why operating the gTLD in a closed manner, as opposed to an open manner, would be a better fit. Additionally, the GAC urges members of the facilitated dialogue group to specify the following point prior to it being asked of applicants: "*Provide clear and concrete rationale for why operating the gTLD in a closed manner, as opposed to an open manner, better serves the identified public interest goal(s)*" (**element 7**).

Furthermore, the GAC considers that the introduction of "private interests" in the Draft Framework is misleading and should be re-considered completely, and if kept, the final draft should include a concrete way forward to define what level of commercial or individual interest is acceptable and when/whether this is compatible with public interest.

The GAC reiterates the difficulty in evaluating organizations' commitments to public interest in the absence of a shared operational definition of the latter (**element 8**). Different societal and legal frameworks in different geographical contexts can lead to very diverging interpretations of what public interest is, potentially leading to lengthy discussions and legal proceedings to decide whether a specific applicant's understanding of Closed Generic gTLDs is in line with

others' values and views of what 'public good' is. The final framework should be fully persuasive that the ICANN community is not moving towards a process that could lead to its own paralysis. Additionally, the specific information outlined in **element 8** should include the number of years of activity, followed by the list of activities per year.

The GAC expresses concerns about a potential contradiction in the case of private sector entities on demonstrating the nexus between the applicant and the Closed Generics term (**element 9**). For private sector entities it may indeed seem relevant to not be connected to the object of the Closed Generic application (as not to raise competition or market dominance concerns) while at the same time they are requested to prove that they have a strong connection with this area. The GAC notes lack of clarity on how this contradiction can be cleared up within the current Draft Framework.

Pertaining to the concept of "representativeness" (**element 10.a**), some GAC members consider that this idea may prove unworkable at the global level. Unless there is a commonly agreed definition of what "*all or a significant part of the businesses*" means, it is unclear how this notion could be interpreted at the local, regional, national or global levels and how conflicts between different applicants and constituencies could be resolved. Those GAC members therefore raise the following questions for the facilitated dialogue group's consideration:

- How would a regional application for a domain like .volunteering compete against another regional or global application?
- Would a regional applicant always be less representative than a global applicant?
- How could representativeness be considered at different geographic levels and within communities that are structured to many different extents in associations or umbrella organization?

GAC members note that even within a theoretical framework where a significant level of global "representativeness" can be defined, full control over a generic gTLD casts serious questions about its effects on market openness and contestability. These questions need to be addressed ex ante for new gTLD rounds to avoid raising countless tensions between communities.

On **element 10.a.ii**, the GAC notes that a consultation should include a public announcement or media release in the relevant community or professional assembly.

The GAC stresses the importance of the identification of risks associated with Closed Generic gTLDs and possible mitigation actions (**element 13**). As such, the GAC notes that this identification of risks or threats should not be left to the appreciation of candidates. In the final framework document, the GAC asks for the inclusion of a preliminary reference list of risks, as well as a procedural consideration of an external control or validation of the risks and related risk mitigation strategy.

The GAC notes that beyond self-policing and self-regulation, candidates and processes should also be expected to comply with existing legislations and policies (i.e., competition and consumer protection rules) (**element 14**).

Finally, GAC members underscore that more elaboration may be required regarding how the applicant will comply with certain obligations (**element 15**) so the applicant must ensure that the Closed Generic gTLD is not used to incite hatred to any community or group, nor that it violates the provisions of any established treaty signed by UN members.

2. GAC Input on the Evaluation Process

As Closed Generic gTLDs pose unique competition-related risks, they should be subject to a specific evaluation process, taking into account special criteria with regard to the risks inherent to Closed Generics (**element 17)**. Extending the gTLDs' standard evaluation process to Closed Generic gTLDs can be seen as an efficient measure from an organizational perspective but does not meet the GAC's expectations in terms of attention to be dedicated to Closed Generic gTLD applicants. In addition, GAC members reiterate the need to address preliminary and fundamental questions about the evaluation. It is not sufficient to mention "*professional judgment*", without elaborating more on this notion, like specifying the qualifications and expertise of evaluators. "Professional judgment" must be clarified and defined similarly to the concept of "public Interest" (**element 18**). As such, the GAC suggests modifying **element 19** to read "*if it fully meets the criteria*".

GAC members flag that in order to fully appreciate the adequateness of the proposed Draft Framework, the evaluation criteria for Closed Generic gTLD applications should, to the extent possible and as appropriate to be convincing in this phase, be contained in this framework and should address the policy concerns of the GAC as expressed in the ICANN76 and ICANN77 Communiqués as well as in earlier statements **(element 18**).

Clarification on whether the panel may seek input from an independent external consultant would be appreciated by the GAC (**element 19**). Furthermore, the "*evaluation panel consisting of suitably-qualified individuals*" should be further characterized in the Draft Framework, and more clear information should be provided concerning the selection of individuals, their required skills, geographical and sectoral representativeness, ensuring stakeholders' regional and linguistic diversity.

GAC members underline that it would be essential to have additional information on the scoring system as part of the Draft framework. Without a definition of what is in the public interest, it is impossible at this stage to assess the extent to which the application meets the prerequisites **(element 20).**

GAC members agree with the notion that no priority should be given to an application of a Closed Generic gTLD in case of a contention (**element 20**). The GAC, however, notes concerns on the use of the standard procedure of string contention resolution in the event that more than one application qualifies as an acceptable Closed Generic gTLD (**element 20.b**) due to the potential moral or societal questions around the interpretation of "public interest". The GAC urges the facilitated dialogue group to further reflect on this topic within the Draft Framework.

The GAC underscores the need for the inclusion of agreed concrete elements of the scoring system in the context of this framework, in order to consider its feasibility in relation to the overall concerns around Closed Generic gTLDs (i.e. embed the elements underpinning the "public interest" notion once defined) (**element 21.b**)

Furthermore, GAC members underscore that given the specific nature and risks of Closed Generics, the objection procedure should not be the same as in the standard process **(element 22),** and agree with the extended phase for objection and public comment considering the unique nature of Closed Generic gTLDs. GAC members note that a customized objection process should be defined in the framework. Finally, the GAC notes that a similar approach should be carried out on public comments (**element 22.b**), inter alia that Closed Generic gTLD applications should have a special public comment approach, which goes beyond extending the comment period and could include additional and extraordinary measures such as reaching out to potential concerned communities asking for their input, or advertising the applications through external media and publications to reach a wider audience.

3. Input on Post-Contracting/Post-Delegation

The GAC notes that certain points of the post contracting/post delegation phase require further attention. The GAC expresses some doubts on the applicability of the Base gTLD Registry Agreement to Closed Generic gTLD applications, in particular pertaining to specific obligations of potential operators which are mentioned in the Draft Framework (**element 24**). The GAC urges the facilitated dialogue group to produce a final draft providing more clarity about these obligations, which should be included in the contract alongside the consequences in case of non-compliance (the suspension and/or cancellation of the Registered Name registration).

The GAC underscores that on top of the publication of its policies concerning the delegation of

Second Level Domains (SLDs), the registry operator should also be required to report regularly on its "representativeness", when applicable, and the steps taken to consult the community on topics of relevance for the management of Closed Generic gTLDs (**element 26**).

Finally, the GAC notes that in addition to ICANN's supervision of the applicant's accountability including the way a public interest is served, there should be a guideline about the withdrawal of the delegation if commitments are not met by the applicant/registry (**element 28**).

Conclusion

The GAC wishes to express its appreciation to members of the GAC, GNSO and ALAC facilitated dialogue on Closed Generic gTLDs for this preliminary framework, and looks forward to reviewing the final framework in due time.

GAC members broadly agree that certain areas and provisions in the Draft Framework should be further elaborated, including defining use cases, risks, and criteria for evaluation of applications. The GAC also understands that GAC consensus is required to achieve GAC, GNSO and ALAC agreement in finalizing this Draft Framework and to make it workable to set the basis for a potential Policy Development Process, which would further define the necessary policy elements applicable to closed gTLDs on the basis of a convincing starting point that addresses GAC's fundamental concerns.

The GAC remains available should the facilitated dialogue group wish to ask clarifying questions on any of the input provided above.

The ICANN GNSO "Business Constituency"

ICANN Business Constituency (BC) Comment on
Draft Framework from the Facilitated Dialogue on Closed Generic gTLDs
15-Jul-2023

This document provides input from the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

The BC appreciates the commitment of GAC, GNSO and ALAC participants to address the ICANN Board's interest in establishing a Framework on Closed Generic gTLDs for the next round of applications. The BC was indirectly represented in this process through the CSG and understands the depth of discussions to develop the Draft Framework.

The BC understands that the Facilitated Dialogue participants are sharing this Draft Framework with the broader community to invite input on elements for which the community seeks additional clarification.

Early in this process, the BC shared a firm and specific position we developed on Closed Generics during the 2012 gTLD expansion[1]:

> **The BC would be concerned about consumer deception and competitor exclusion if a single competitor in an industry manages a closed TLD where the TLD string is closely identified with the industry.**
>
> For example, say a travel company or a hotel chain runs **.HOTELS** as a closed TLD -- not allowing competitors to register second level names, while also controlling content on domains such as search.hotels, eco.hotels, family.hotels, best.hotels, cheap.hotels, luxury.hotels, etc. It's easy to see how the TLD owner could bias content and search results on those consumer information sites, without consumers being fully aware.

While the BC appreciates that the concern above has been partially adopted by Facilitated Dialogue participants, we believe there is need for clarification, as explained in our comments below.

[1] Mar-2013 BC comment on Closed Generics, at https://www.icannbc.org/assets/docs/positions-statements/bc-comment-on-closed-generic-tlds.pdf

The Application Process

3.a.	The applicant should provide detailed explanations to enable a thorough evaluation of its application. Abstract or generalized statements may not be sufficient for evaluation.

We agree that the applications must contain no abstract or generalized statements. The prospect of an applicant being able to modify the intent of its closed generic gTLD due to vague criteria should not be accepted. We are interested to know if this was part of the rationale for the Facilitated Dialogue team's decision on this matter.

Approach to a Baseline Understanding of Closed Generic gTLDs

For purposes of the Facilitated Dialogue on Closed Generic gTLDs, it was necessary for the group to have a shared understanding of concepts relevant to closed generic gTLDs. Bearing in mind relevant definitions found in the Base gTLD Registry Agreement, Section 2.9(c) ("Affiliate") and Specification 11, Section 3(d) ("Generic String"), the group agreed that there are several other relationships and entities beyond the narrow definition of "Affiliates" that must be included as potential registrants and beneficiaries in a closed generic gTLD, depending on the operational model of the gTLD.

Specifically, the group identified (a) members of a trade association, where the trade association is the registry operator, (b) independent chapters that are members of a larger federation or organization[1] where that federation/organization is the registry operator, and (c) members of a consortium of similar organizations, where the consortium is the registry operator. The policy group that takes up the Closed Generics issue may identify additional relationships and entities. Please note, these additional categories would be their own sub-group (separate from Affiliates) that applies only to Closed Generic gTLDs. These should not impact any other types of new gTLDs including Open, Community, Geographic or other types of new gTLDs set forth in the New gTLD Subsequent Procedures Final Report.

The BC appreciates the expansion of understanding about eligibility to apply and operate a closed generic gTLD, however, when talking about trade associations or a consortium of similar organizations, it needs to be recognized that there may be multiple such organizations for a single industry or focus area, and awarding the use of a generic name to one group may create consumer confusion and not meet the public interest. How would such a situation be addressed during the application process?

We also ask if the Facilitated DIalogue group intends not to permit **a single corporation** to apply for a closed generic gTLD? Our reading of the framework suggests that only **representative organizations** could fulfill the application criteria.

The Application

4.a.	The applicant must also demonstrate how its closed generic gTLD will serve the broader public interest; for example, by providing a positive societal benefit or contributing to the general welfare and wellbeing of the public.[3] For clarity, this requirement will apply to all closed generic gTLD applicants, including those whose proposed closed generic gTLD is intended to serve a public interest goal(s) targeted toward a small intended segment of the public. The public interest goes beyond the commercial or individual interest of the applicant.

In keeping with the need for use of a generic name to be clear to consumers, the focus on Public interest, which goes beyond commercial or individual interest of the applicant, is imperative.

5.a.	The applicant must provide information clearly describing the intended purpose, which must not be to solely exclude other parties from using the gTLD or solely serve the applicant's own commercial interests. The purpose must relate to the specific public interest goal(s) stated by the applicant in its application.

The BC agrees that the granting of a closed generic gTLD must not exclude other parties that are engaged in the same scope of function. However, the framing in the draft using the word 'solely' stands in the way of accomplishing these goals. An applicant could easily satisfy this condition by simply asserting that their planned exclusion of competitors was not their 'sole' purpose in closing the TLD to registrations.

Moreover, even if the TLD is open to competitors to register names, the generic TLD operator can still confuse users by its unregulated use of "reserved" second level names. For example, the generic TLD operator can control content on domains such as search.TLD, info.TLD, eco.TLD, family.TLD, reviews.TLD, best.TLD, etc. It's easy to see how the TLD owner could bias content and search results on those consumer information sites, without consumers being fully aware that the content was controlled by a single competitor.

This concern is not addressed by requirements that competitors could not be prevented from registering names. However, concerns about biased content are arguably beyond the scope of ICANN and are rightly the concern of consumer protection authorities. Still, the application process should require a closed generic applicant to disclose the policies they would follow in managing reserved second level domains. And this disclosure would inform the public interest evaluations for the application.

10.	Demonstrate the requirement of representativeness OR of non anti-competitive behavior.		
	10.a.	Track 1: For "representativeness", applicants must demonstrate that the applicant represents all or a significant part of the businesses (or has their agreement) in the industry or group related to the closed generic term.	
		10.a.i.	This criterion can be fulfilled, for example, by the applicant being an umbrella organization of the industry in question.
		10.a.ii.	The application must show that significantly "interested parties," including competitors, have been consulted and engaged for input prior to submission of the application.
	10.b.	Track 2: For "non anti-competitive behavior", applicants must commit that its use of this closed generic gTLD will be consistent with principles of competitive neutrality[4], non-discrimination[5] and transparency[6]. This commitment must be reflected in the registry operator's contract with ICANN, which may be in the form of a Code of Conduct or as part of a Specification to the extent that one is developed to govern a registry operator's use of a closed generic gTLD.	
		10.b.i.	This criterion builds on the requirements that applicants of closed generic gTLDs must state their public interest goal(s) and intended purpose for the gTLD, and the intended purpose(s) must not be to solely exclude other parties from using the gTLD or to serve the applicant's own commercial interests.

[4] "Competitive neutrality" in this regard means that the applicant will not use its control of the closed generic gTLD to gain an advantage in the market or segment of the public toward which its use of the gTLD is directed, to the detriment of its competitors and other entities also operating in that market or sector.

[5] "Non-discrimination" in this regard means that the applicant will act fairly in respect of all third parties that also provide the same goods, information or services to the same target market or segment of the public, and will not exclude access to its goods, information or services on the basis of race, color, religion, sex, age, or other attribute generally recognized as protected categories or classes of people.

[6] "Transparency" in this regard means that the applicant will operate its closed generic gTLD in a manner consistent with these principles by establishing, publishing, and adhering to policies governing its provision of goods, services or information through the gTLD.

In 10.a, requiring the applicant to be representative of all or a significant part of the businesses in the industry or group (or has their agreement) is a step toward ensuring nobody is excluded. However, in cases where there are multiple industry groups, trade associations or consortia of similar organizations as outlined above, it is possible for an applicant to omit engaging with those that may oppose the applicant's mission or scope. In so doing, the application does not meet the intent of this section. How can this be addressed as part of the application process?

In 10.b, it must be clear that the three criteria (competitive neutrality, non-discrimination, transparency) are not isolated in evaluation. While each is distinct, an applicant could violate one but pass on others. All three must be evaluated in each application.

13.	Identify any threats or risks that could reasonably be posed if the closed generic gTLD is delegated, and detail the specific mitigating actions that the applicant plans to take to minimize these threats and risks.	
	13.a.	Evaluators should review the threats and risks to competition along with the proposed mitigating actions and public interest goal(s) of the closed generic gTLD.

This appears to be more suited to Public Comment and intervention than to the applicant. An applicant could provide reasonable explanation to risks that do not reflect the ultimate impact of improper delegation of a gTLD. The intervention needs to have equal footing.

The Evaluation Process

19.	The evaluation of closed generic gTLD applications must be performed by a panel consisting of suitably-qualified individuals.

We seek clarification of what a suitably-qualified panel looks like. It will differ with every applicant in every business or group. What is envisioned?

21.b.	While the scoring system should enable multiple paths for an applicant to succeed, some evaluation criteria may be weighted more heavily than others.	
	21.c.iv.	The representativeness of the applicant (#10.a. on page 5): For applications that follow the "representativeness" track (as opposed to the "non anti-competitive behavior" track) representativeness may be scored with a sole individual being on the lowest end of the scoring spectrum, and a transparent international organization with wide membership being on the highest end of the spectrum.

We note that the group is introducing a scoring system for 10.a which deals with representativeness.

Why has the group not introduced the same scoring system for 10.b to cover competitive neutrality, non-discrimination, transparency – each of which should be scored with anti-competitive behavior figuring prominently into the scoring?

Contracting and Post-Delegation

Contracting & Post-Delegation		
24.	The Base gTLD Registry Agreement should also apply to closed generic gTLDs.	
	24.a.	This agreement can be supplemented by an additional Specification documenting the unique terms, conditions, commitments and obligations specific to closed generic gTLDs. In this regard, it may be helpful to look to the development and purpose of Specification 13 as a guide for a Specification that applies to closed generic gTLDs. The New gTLD Registry Code of Conduct (Specification 9) FAQs document may also be helpful.

24.a suggests that the agreement 'can' be supplemented by additional Specification to document terms, conditions, commitments and obligations. The BC believes that commitments in a successful application 'must' be supplemented and adhered to throughout the operation of the gTLD.

We would also suggest requiring a prominent explanation on any closed generic websites, explaining which entities are included in this space so that users are aware that the gTLD does not allow all players in the relevant market. We firmly believe that this is a necessary transparency measure to avert potential consumer confusion.

Concluding Comment and Question

This draft framework presents a very complicated process with multiple evaluation points that are highly subjective, such as "public interest" tests. We believe the proposed process would likely prevent any closed generics in subsequent rounds.

Question is, does the Facilitated DIalogue group ***intend*** for their process to prevent ***any*** closed generics?

If not, the Framework should be simplified to the point that a well-intentioned applicant has some hope of running the gauntlet of evaluations and objections.

This comment was drafted by Tim Smith, Steve DelBianco, and Marie Pattullo.
It was approved in accord with our Charter.

ALAC CORRESPONDENCE
AL-ALAC-CO-0623-03-00-EN
ORIGINAL: English
DATE: 28-06-2023
Status: Pending Ratification

ALAC Input on the Closed Generics Draft Framework

The ALAC appreciates the opportunity to comment on the Facilitated Dialogue on Closed Generic gTLDs Draft Framework. The ALAC further appreciates the extensive discussions, held as part of the Facilitated Dialogue as well as the experiment in "unpressured" consensus building. Unfortunately, it is the view of the ALAC that the resulting framework lacks sufficient intent and clarity to be operationally useful. While it is possible that a follow on PDP would add sufficient clarity, it is the view of the ALAC that more direction is needed from the framework to facilitate a useful discussion around implementation.

In the absence of such changes, the ALAC believes that a resultant policy may well allow and encourage just the type of closed generic applications that caused the concern during the 2012 round.

System Bias

Every system, or "framework," has a built-in bias or default, to resolve "close calls" within the system. The ALAC believes that the bias, with regards to so-called "Closed Generics" should be against the monopolization of common terms by a single entity, particularly a commercial or commercially-led entity. The requirement that the applicant justify their proposal with a public interest is not an invitation to creativity but rather the expression that it should be the *exception* when such a string is granted. The ALAC believes that the risks, associated with such a gTLD, will outweigh the benefits in most cases. While the framework rightly points to language in the Subsequent Procedures Working Group Final Report, supporting the notion of predictability for applicants, it is the view of the ALAC that, all things being equal, the award of a generic string, for the exclusive use of one entity, should be denied. Such a system bias, if agreed to by the community, should be made explicit *and* predictable.

Burdensome Complexity
Ironically, the implicit bias of the proposed framework is towards large entities, with sizable legal budgets, ready to traverse the gauntlet of complex procedures, over applicants whose intention might actually be the advancement of the public interest. Any system, to be workable, needs to be sufficiently simple to be available to applicants of all types but in particular to communities and not for profit entities with long standing public interest missions. In its current form, the number of tests suggests that only the wealthy will attempt, much less succeed, in applying for a closed generic, which is quite the opposite of the intention of a public interest requirement. The proposed gauntlet provides, at best, only the *appearance* of public interest preservation.

Insufficient Clarity
While the notion of scenarios is discussed, the proposed framework would benefit from their more explicit use to highlight the intentions of the drafters. Instead, the framework often relies on vague, abstract or possibly overly legal definitions that simply postpone the discussion about validity. In particular, the distinction between representative organizations and those with no anti-competitive intent should be made clearer. One tool to express intent would be the use of specific hypotheticals. For example, a commercial entity that produces “safety” products should probably *not* be allowed to monopolize the generic term “.safety,” for its own use. While a public interest case could be made for a series of websites, focused on, for example, fire.safety, water.safety and traffic.safety, if such a series was ultimately a kind of advertising platform, for a single vendor, the ALAC would consider such a public interest benefit outweighed by the potential for unfair competition. This argument equally applies to other 2012 examples such as .book run by a specific large book seller, .carinsurance run by a specific car insurance company or .cruise run by a specific cruise ship line. On the other hand, a .disaster run by a consortium of disaster-relief organizations might well be considered in the public interest. A series of explicit hypotheticals would add more clarity to the framework, facilitate implementation *and* predictability of eventual applications.

Instead, in the absence of clear hypotheticals, the proposed framework would seem to imply a lack of clarity in the work of the facilitated dialog itself. Ultimately, it is likely that criticisms of the proposed framework are merely reflections of a convoluted consensus by the small team, rather than actual errors in the document. In the absence of clear intent, by the small team, a PDP would be challenged to propose a workable system that reflected those intentions.

Process Failings

The Facilitated Dialogue process was clearly challenged by the deadline imposed by the GNSO and Board. ICANN's Consensus Playbook encourages strategic deadlines but cautions using a deadline to force agreement when the group is not yet ready. Moreover, the Consensus Playbook strongly supports striving for full consensus, but makes it very clear that it must not be required. The process that the Facilitated Dialogue used evidently required full consensus. That, and the timeline, resulted in a long list of issues that were never fully discussed. This included issues which were summarily dropped despite strong support due to the proposal not being acceptable to some group members.

Conclusion

While the ALAC appreciates the intentions of the board and the efforts of the small team, a framework comprised of complex, yet vague evaluation criteria represents a kind of Pyrrhic victory, that has the potential to inspire results that are the opposite of the intentions of the majority of the community. The ALAC believes that the proposed framework is both too complex to be useful to a "typical" public interest organization and too vague to disallow the very kinds of anticompetitive outcomes that drove opposition to closed generics in the previous round.

In short, the small team should clarify its intentions, express a conscious bias, and clarify those intentions through the inclusion of explicit hypotheticals. Only then will it be possible to construct an exception-based framework which is open to the entire global interest community.

28 July 2023

Re: ICANN org input into Facilitated Dialogue on Closed Generics

Dear members of the GAC-GNSO-ALAC Facilitated Dialogue on Closed Generic gTLDs,

We would like to thank you for the opportunity to provide feedback on the draft framework and congratulate the group for reaching a broad understanding on how subsequent policy work on this complex topic can be framed.

ICANN org has a few comments that we would like to share as the group proceeds to work towards a Final Framework to underpin the policy work that we understand the GNSO Council is considering to initiate. Please note that our feedback does not imply that ICANN org has determined that the framework is unimplementable. ICANN org looks forward to working with members of the expected EPDP team, in our customary roles as appropriate in a community policy development process to facilitate the development of clear and implementable policy recommendations.

Our specific observations on certain aspects of the framework are as follows:

a. ICANN org understands that the dialogue group took into consideration the current definitions of “Affiliate” and “Generic String” in the Base gTLD Registry Agreement in developing its proposal that certain types of relationships and entities could be included as potential registrants or beneficiaries in a closed generic gTLD. ICANN org believes that it will be necessary, either during this facilitated dialogue, or during a future policy development phase, as appropriate, to objectively define the scope of these relationships and entities that should fall in this expanded category so that the dividing line between a “closed” gTLDs and other types of restricted gTLDs is clear. For example, an EPDP could provide a policy recommendation specifying the types of organizations that would be within the scope of the related entities in this category that should be included as potential registrants or beneficiaries in a closed generic gTLD. Additionally, more guidance would be needed to understand the boundaries of what constitutes a “generic string”.
b. The Governmental Advisory Committee referred to the concept of ‘public interest’ with regard to closed generic gTLDs in its 2013 Beijing Communiqué. ICANN org notes that it is likely to be very difficult to develop a universal, agreed definition of what is in “the public interest”, but consideration could be given to whether further guidance can be provided to objectively define what it means for any TLD, including a closed one, to serve a public interest goal. It may well be more appropriate for this discussion to be part of the substantive policy discussions expected to take place in the anticipated EPDP, and our feedback on this point should not be taken as

indicating the specific forum in which this discussion should take place or its outcome.

c. ICANN org appreciates the group's comprehensive proposal for determining whether an applicant for a closed generic gTLD should be awarded the applied-for string. However, there may be value for the group to explore whether a 'scoring system' is the way forward or whether the policy could focus on the type of restrictions that would be placed on a self-designated 'closed generic'. We raise this point in the context of the perceived lack of objective, transparent and consistent decisions with regard to Community Priority Evaluations during the 2012 round was a major concern among the community, and, in our view, a similar outcome should be avoided for any future process around closed generic gTLDs.

As a general matter and as the dialogue group begins its deliberations on a Final Framework, ICANN org would like to encourage the group to bear in mind the need to balance a thorough process for applying for, evaluating and operating a closed generic gTLD with the risk that an overly complex and costly process could result in only a very small number of eligible applicants deciding to apply for as well as fulfill all requisite criteria to operate a closed generic gTLD.

We hope this brief input is helpful and invite you to reach out to ICANN org's GDS or other teams if we can be of any assistance.

We look forward to reading the group's Final Framework and thank you again for the effort the group has made to reach this milestone.

Sincerely,

Theresa Swinehart
Senior Vice President of Global Domains and Strategy