

PROBLEM STATEMENT & BRIEFING PAPER FOR GAC-GNSO FACILITATED DIALOGUE ON CLOSED GENERIC GTLDS

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PROBLEM STATEMENT

The [2007 GNSO policy recommendations](#) that the ICANN Board adopted in 2008 for a new round of gTLDs did not explicitly address the question of closed generics, viz., whether gTLDs that represent generic terms and are intended for exclusive registry access should be permitted or prohibited as a matter of policy. Consistent with the GNSO's recommendations as adopted by the Board, the [Applicant Guidebook for the 2012 New gTLD Program](#) did not contain specific guidance regarding applications for closed generic gTLDs, thus implicitly allowing them. From 2013-2015, following community discussions and feedback, including [GAC advice](#) that gTLD strings representing generic terms should serve a public interest goal, the Board's New gTLD Program Committee took action to [resolve](#) this question in relation only to the applications for closed generic gTLDs that were received for the 2012 New gTLD Program.

The New gTLD Program Committee also [requested](#) that the GNSO specifically include consideration of the issue as part of its policy work on subsequent rounds of new gTLDs. In 2021, the [GNSO's Policy Development Process Working Group on New gTLD Subsequent Procedures](#) concluded its work, but was unable to reach consensus on a policy recommendation.

This facilitated dialogue provides the GAC and the GNSO with the opportunity to align on a possible framework for closed generic gTLDs that can be further developed through the appropriate GNSO policy process, to create a community-developed consensus policy that will apply to future gTLD expansion rounds. If the facilitated dialogue does not result in an agreed framework, the Board will need to decide whether to permit closed generic gTLDs in the upcoming next round of new gTLDs.

BRIEFING PAPER

Purpose

This paper summarizes the current status of community work on the issue of closed generics and notes the scope of the facilitated dialogue as suggested by the Board, taking into account the [GAC's](#) and [GNSO's](#)¹ responses to the [Framing Paper](#) on this point. This paper also contains an Annex with links and references to relevant documentation, including GAC advice and ALAC statements on the issue.

This paper is intended to serve as a factual reference for the ALAC, GAC and GNSO participants in the facilitated dialogue as well as the community. ICANN org takes no position on the final scope of the dialogue nor on any desired outcomes, all of which are matters for community discussion and agreement. The paper also does not cover the norms of participation or other mechanics and logistical details for the facilitated dialogue, which ICANN org expects to be a matter to be discussed between and among the dialogue participants and the selected facilitator; and documented following agreement on these details.

Proposed Definition

“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.

¹ To support its response to the Board’s request, the GNSO convened a small team of Councilors, which developed a series of [recommendations](#).

Status of Community Work on the Issue

There is currently no community-developed consensus policy governing the question of whether closed generic gTLDs (i.e., gTLDs representing a generic term and intended for exclusive registry access) should be permitted or prohibited in subsequent rounds of new gTLDs.

Background to the Issue

As noted in the Problem Statement for this facilitated dialogue, the [GNSO policy recommendations](#) that were implemented for the 2012 New gTLD Program did not explicitly address the question whether closed generics should be permitted or prohibited as a matter of policy. In April 2013, the GAC issued [advice](#) stating that “for strings representing generic terms, exclusive registry access should serve a public interest goal”. In 2015, following community discussions, the Board’s New gTLD Program Committee (NGPC) took action to resolve the sole question of whether to permit such gTLDs in the then-current 2012 New gTLD Program Round, in respect of those applications that had been received for closed generic gTLDs.

Prior to its 2015 action, the NGPC [requested](#) that ICANN org initiate a [public comment process](#) to obtain broader input and ask the GNSO Council to provide guidance on the matter. The GNSO Council’s 2013 [response](#) was that, although the specific issue of a policy for closed generic gTLDs was not discussed explicitly during the work leading up to the GNSO’s final recommendations in 2007, the question about restricting new gTLDs had, in general, been considered. The GNSO Council noted that, at the time, it was the view within the GNSO that it should not be ICANN’s responsibility to restrict the use of gTLDs in any manner, but instead to let new gTLD applicants propose various models; open or closed, generic or not. Consistent with the GNSO’s policy recommendations, the Applicant Guidebook for the 2012 New gTLD Program did not contain specific provisions addressing the issue of closed generic gTLDs, thus implicitly permitting applications for them to be submitted.

In [taking action](#) on those applications received for the 2012 New gTLD Program round, the NGPC also requested that the GNSO specifically include consideration of the issue of exclusive registry access for generic strings serving a public interest goal as part of its policy work on subsequent rounds of new gTLDs. The GNSO Council initiated the New gTLD Subsequent Procedures Policy Development Process (PDP) (SubPro) in 2016. The topic of closed generics was included in the PDP [charter](#) and detailed in the [Final Issue Report](#) supporting initiation of the PDP.

The SubPro PDP extensively discussed the issue of closed generics, as documented in the following reports:

- [Initial Report](#) (see pages 119-127)
- [Draft Final Report](#) (see pages 96-102)
- [Final Report](#) (see pages 101-108)

As the PDP progressed, the working group considered community input received through a series of public comment periods (see Annex for details). In the course of its work, SubPro discussed a number of proposals for a potential path forward on the topic. Three such proposals, submitted by working group members in the late stages of deliberations, were referenced in the Draft Final Report:

- [A Proposal for Public Interest Closed Generic gTLDs](#) (PICG TLDs), submitted by Alan Greenberg, Kathy Kleiman, George Sadowsky, and Greg Shatan, which proposed creating a new category of gTLDs for public interest closed generic strings, much like the “community status” of certain applications in the 2012 New gTLD application round.
- [The Case for Delegating Closed Generics](#), submitted by Kurt Pritz, Marc Trachtenberg, and Mike Rodenbaugh, which argued for permitting the delegation of closed generics as long as the application meets all other Applicant Guidebook (AGB) criteria.
- [Closed Generics Proposal](#), submitted by Jeff Neuman in his individual capacity, which proposed establishing a framework for evaluating closed generic applications to determine whether those applications “serve a legitimate public interest goal.”

As part of the Public Comment proceeding for the Draft Final Report, the working group requested community input on whether any of these proposals should be pursued further. After reviewing public comments on the Draft Final Report, the working group did not find clear agreement in support of any of these proposals.

In January 2021, the SubPro PDP working group completed its work and submitted its [Final Report](#) to the GNSO Council. Ultimately, the working group came to “No Agreement” on closed generics, and as a result, the GNSO Council did not send policy recommendations to the Board on this topic.²

The GAC provided input to the SubPro PDP WG during community consultations (see Annex) and reiterated its advice that closed generic gTLD strings should serve a public interest goal, and that adequate means and processes should be defined to ensure that public interest goals are met. The GAC further noted that the burden of demonstrating the public interest benefit of a closed generic string should rest with the applicant and be subject to comments during the evaluation process for new gTLD applications.

During the SubPro PDP deliberations, the GAC took note of the three proposals brought forward by members of the working group, stated that it is not in a position to support the proposal which would allow all closed generics being delegated, and found common ground in the other two proposals. The GAC suggested that elements included in the two proposals should be further explored, including the idea for a public interest closed generic review panel, and creation of a specific public interest closed generic gTLD. The GAC noted that this would require further community work in order to minimize

² For additional context, as noted in the GNSO Council [resolution](#) adopting the SubPro Final Report, “Closed Generics was identified as an Output category of **No Agreement**, which did achieve Full Consensus. However, the GNSO Council believes No Agreement is functionally equivalent to the designation of Divergence as detailed in the GNSO Working Group Guidelines, meaning that the Working Group was unable to reach consensus in recommending an alternate course of action.”

added complexity and avoid undue overlap with community status applications. Additionally, the GAC found value in the notion of creating a Framework for Evaluating Closed Generic applications to determine whether those applications serve a legitimate public interest goal.

Origin of the Facilitated Dialogue

Consistent with the NGPC's request in 2014 that the issue of closed generics be addressed through a GNSO policy process, the Board believes that it is important for the community to determine the policy for closed generics and is seeking to avoid determining the approach for the community. The Board has requested that the GAC and the GNSO consider engaging in a facilitated dialogue, based on the suggested scope and parameters set out in a Framing Paper prepared by ICANN org, to attempt to reach an agreed framework that would be further developed through the appropriate GNSO policy process.

Proposed Scope for the Facilitated Dialogue

As noted in the [Framing Paper](#) outlining a proposed scope for this facilitated dialogue, it is evident from the PDP deliberations and the community's discussions and feedback that neither of the two "edge outcomes" are likely to achieve consensus ; i.e.:

1. allowing closed generics without restrictions or limitations OR
2. prohibiting closed generics under any circumstance.

The Framing Paper therefore included the suggestion that the goal of the dialogue could be to focus on how to achieve a balanced outcome that does not represent either of these two scenarios (i.e., both outcomes are agreed to be "out of scope" for the dialogue). Within this agreed framework, the aim would be to identify specific circumstances where closed generics could be allowed (e.g., when they serve one or more identifiable public interest goal(s)). This will likely require the dialogue participants to discuss:

1. what may constitute a generic string, who determines whether a string is generic, and how they make that determination.
2. what may constitute identifiable public interest goals for a particular gTLD, how the goals are to be served if the TLD is delegated to the applicant, who determines whether the goals serve the public interest, and how they make that determination; and
3. who determines whether the goals are being served in practice, the potential consequences if this turns out not to be the case, and the types of possible safeguards that could apply to closed generics after they are delegated.

As a foundational component of the work, dialogue participants will likely also need to review the definitions of "generic string" and "exclusive registry access" noted above (and taken from the Base Registry Agreement), to consider whether they are appropriate for the purpose or whether additional work is needed on the definitions. For example:

- Is the definition of “generic” that is included in the base registry agreement sufficiently clear for the purposes of the framework? How can it be determined if a string is generic for the purposes of future application rounds?
- Are "closed" TLDs and TLDs with "exclusive registry access" synonymous? Is the language included in the RA with respect to exclusive registry access sufficient or is additional guidance needed?

In addition, without re-opening or repeating the SubPro deliberations on the three proposals from various SubPro working group members, dialogue participants may wish to consider what, if any, specific elements of the three proposals are within the scope of the dialogue and directly relevant to their work such that these limited elements can be leveraged in developing an agreed outcome to the dialogue.

Where questions about the public interest are concerned, dialogue participants may need to acknowledge up front that this cannot be defined as a universal rule for all situations. As such, participants may wish to choose to focus on establishing criteria that could assist with the identification of one or more “public interest goals” for any given gTLD. In this regard, it may be helpful to refer to the work that has been done by the Board, the org and the community on the [Global Public Interest Framework](#), especially as to whether any particular elements or tools may be helpful for the purpose of this facilitated dialogue.

Next Steps following Conclusion of the Facilitated Dialogue

If the dialogue results in a mutually agreed approach toward the issue of closed generic gTLDs, the GNSO will need to initiate a policy process to allow the community to develop a consensus policy for closed generic gTLDs that, if adopted by the Board, will apply as a matter of policy to upcoming and future rounds of new gTLDs, unless and until amended by a future GNSO policy.

If the dialogue does not result in such a mutually agreed approach, the situation that there is no community-developed consensus policy on the issue will remain. As such, the Board will need to decide how to handle applications for closed generic gTLDs that may be submitted in the upcoming round of new gTLDs.

ANNEX

I. GAC Advice, Statements & Correspondence on the Issue

- [ICANN46 GAC Beijing Communiqué](#) (11 April 2013), GAC Advice to the ICANN Board: *“For strings representing generic terms, exclusive registry access should serve a public interest goal.”*
- [Response to Sub Pro PDP CC2](#) (22 May 2017): *“Based on principles of promoting competition and consumer protection, exclusive registry access should serve the public interest goal (per Beijing GAC Communiqué Cat. 2 Safeguards Advice)”*
- [Comment on Sub Pro PDP Initial Report](#) (8 October 2018): Re-affirms previous advice (Beijing Communiqué, Cat. 2 Safeguards): *“for strings representing generic terms, exclusive registry access should serve a public interest goal”*
- [ICANN67 Communiqué](#) (16 March 2020), Issues of Importance to the GAC: *“The GAC should conduct further work to identify criteria, examples and use-cases that may serve for assessing the public interest in the context of closed generics.”*
- [GAC Compilation of Individual Input](#) (9 May 2020): Majority of GAC members contributing support previously articulated GAC Advice (GAC Beijing Advice): *“exclusive registry access should serve a public interest goal”*. Individual GAC members noted that public interest should be defined.
- [ICANN68 GAC Communiqué](#) (27 June 2020), Issues of Importance to the GAC: *“Some GAC members expressed the view that the lack of a formal PDP WG recommendation on the delegation of closed generics would imply that the relevant Board Resolution from the 2012 round would still apply.”*
- [GAC Comment on Subpro PDP WG Draft Final Report](#) (29 Sep 2020):
 - *The GAC is mindful 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.*
 - *In this respect, the GAC continues to support the retention of the advice contained in the GAC Beijing Communiqué whereby “exclusive registry access should serve the public interest goal” and that adequate means and processes are defined to ensure that public interest goals are met. The burden of demonstrating the public interest benefit of a closed generic string should rest with the applicant and be subject to comments during the review process.*
 - *As no agreement has been found yet within the PDP WG, the GAC encourages further discussions to identify criteria as to how to assess “public interest” within closed generic TLDs. In this sense, the GAC, recognizing that the PDP WG has not been able to agree on*

how to treat closed generic TLD applications in future rounds, has taken note of the three proposals submitted by individual/small groups of PDP WG Members

- *Regarding these proposals, the GAC is not in a position to support “The Case for Delegating Closed Generics”, which would allow all closed generics being delegated, and finds common ground in the other two proposals. The GAC notes that the “Proposal for Public Interest Closed Generic gTLDs”, which includes a new category of new gTLDs - Public Interest Closed Generic Strings (PICGS) - is aimed to operate within a public interest framework directly in response to the GAC Beijing Advice, and notes that the suggestion of a public interest closed generic review panel and creation of public interest closed generic would require further community work, in order to minimize added complexity and avoid undue overlap with community status applications. The GAC encourages the continued consideration of this proposal together with the “Closed Generics Proposal”, both proposals having found explicit support in the GAC. Regarding the “Closed Generics Proposal” the GAC finds value in the notion of creating a Framework for Evaluating Closed Generic applications to determine whether those applications serve a legitimate public interest goal.*
- [ICANN70 GAC Communiqué](#) (25 March 2021), Issues of Importance to the GAC:
 - *Regarding Closed Generic TLDs, GAC Members noted support for the proposed suspension of Closed Generic TLD applications until policy recommendations and/or a framework on the delegation of closed generics which serve a public interest are developed by consensus, as per the At-Large minority statement. GAC Members drew the attention of the Board and the community to the GAC consensus comment on the SubPro PDP Draft Final Report, which elaborates and adds substance to the Beijing GAC Advice on Closed Generic TLDs.*
- [GAC Comment on GNSO New gTLD Subsequent Procedures Final Outputs for ICANN Board Consideration](#) (1 June 2021):
 - *The GAC is mindful that the issue of closed generics has generated considerable debate and diverse views. GAC Members support the proposed suspension of Closed Generic TLD applications until policy recommendations and/or a framework on the delegation of closed generics, which serve a public interest are developed by consensus, as per the ALAC minority statement and subsequent ALAC Advice to the ICANN Board.*
 - *As to substance, the GAC continues to support the retention of the advice contained in the GAC Beijing Communiqué whereby “exclusive registry access should serve the public interest goal” and that adequate means and processes are defined to ensure that public interest goals are met. The burden of demonstrating the public interest benefit of a closed generic string should rest with the applicant and be subject to comments during the review process.*
 - *As no agreement has been found within the PDP WG, the GAC encourages the Board to take the necessary steps for starting outcome-oriented community discussions to identify criteria as to how to assess “public interest” within closed generic TLDs.*

- *In this sense, the GAC, recognizing that the PDP WG was not able to agree on how to treat closed generic TLD applications in future rounds, took note of the three proposals submitted by individual/small groups of PDP WG Members:*
- *Regarding these proposals, the GAC has expressed that it is not in a position to support “The Case for Delegating Closed Generics”, which would allow all closed generics being delegated, and finds common ground in the other two proposals. The GAC further noted that the “Proposal for Public Interest Closed Generic gTLDs”, which includes a new category of new gTLDs - Public Interest Closed Generic Strings (PICGS) - is aimed to operate within a public interest framework directly in response to the GAC Beijing Advice, and also noted that the suggestion of a public interest closed generic review panel and creation of public interest closed generic would require further community work, in order to minimize added complexity and avoid undue overlap with community status applications. The GAC encourages the continued consideration of this proposal together with the “Closed Generics Proposal”, both proposals having found explicit support in the GAC.*
- *Regarding the “Closed Generics Proposal” the GAC finds value in the notion of creating a Framework for Evaluating Closed Generic applications to determine whether those applications serve a legitimate public interest goal.*

II. GNSO Council Statements & Correspondence on the Issue

- [7 March 2013 Letter from Steve Crocker to Cherine Chalaby](#)
 - “. . . the Council would like to point out that, although the GNSO did not explicitly consider the issue of “closed generic” TLDs as part of the new gTLD PDP [concluding in 2007], we recall that the issue of restricting new gTLDs was, in general, considered and discussed. At that time, it was the view within the GNSO that it should not be the responsibility of ICANN to restrict the use of gTLDs in any manner, but instead to let new gTLD applicants propose various models; open or closed, generic or not.”
- [27 July 2015 Letter from Steve Crocker to Jonathan Robinson](#)
 - “. . . the NCPG requests that the GNSO specifically include the issue of exclusive registry access for generic strings serving a public interest goal as part of the policy work it is planning to initiate on subsequent rounds of the New gTLD Program.”
- [21 September 2015 Letter from Jonathan Robinson to Steve Crocker](#)
 - “. . . the Preliminary Issue Report on New gTLD Subsequent Procedures, which is currently available for public comment (<https://www.icann.org/public-comments/new-gtldsubsequent-prelim-2015-08-31-en>), contains a discreet subject for each of Closed Generics (Section 4.3.11 of the report) and the Global Public Interest (4.3.9 of the report), as each pertains to New gTLDs. Excerpts of each of these sections can be found in Annex A to this letter. The GNSO Council would, however, like to take this opportunity to note that there are challenges related to the definition or scope of “global public interest”, as well as determining how this should be integrated into the New gTLD Program, especially as it relates to exclusive registry access to generic strings. Therefore, we welcome any input that you or the ICANN Board may have on this subject, which

could be returned either via correspondence or perhaps as public comment to the Preliminary Issue Report.”

- [12 October 2015 Letter from Steve Crocker to Jonathan Robinson](#)
 - On the topic of “global public interest” and the related challenges in the definition or scope of the phrase, the GNSO Council’s concerns are noted. As members are aware, staff will be available to support the Community when they have sufficient bandwidth on the broader theme of exploring how the term “public interest” is understood within ICANN’s remit; whether this is through providing background research or other means deemed useful by the Community in preparing for a bottom-up, multistakeholder approach that is cognizant of the operational, legal, and fiscal parameters and limitations of any potential definition(s).”
- [24 November 2015 Letter Volker Greimann & David Cake to Steve Crocker](#)
 - “Following our review of your response during the GNSO Council meeting on 21 October, several Council members pointed out the importance of the development and implementation of a global public interest framework bounded by ICANN's mission. The Council would be interested to learn how the Board has interpreted and considered the public interest in relation to its responsibilities under the ICANN Bylaws, as it may help inform subsequent discussions on the linkage between the new gTLD Subsequent Procedures Policy Development Process and the topic of exclusive registry access for gTLD strings representing generic terms.”
- [12 April 2016 Letter from Steve Crocker to James Bladel](#)
 - Elaborates on the Board’s interpretation and consideration of the public interest, research of the global public interest framework, and next steps on this work.

III. Other SOAC Statements on the Issue

- [ALAC Statement on “Closed Generic” gTLD Application \(7 March 2013\)](#):
 - *“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 practise 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."*
- [ALAC Advice to the ICANN Board on Subsequent Procedures PDP Recommendations \(16 April 2021\)](#): "In the present absence of consensus policy recommendations by SubPro WG with respect to Closed Generics, the ALAC advises the ICANN Board to direct ICANN Org to suspend any processing or acceptance of any applications for Closed Generics until such time consensus policy is adopted on how to address applications for Closed Generics which serve a global public interest."

IV. Community Input received during SubPro PDP

- [Responses to SubPro Community Comment 2](#) (see tab 4 of spreadsheet)
- [Public Comments on SubPro Initial Report](#) (see tab 10 of spreadsheet)
- [Public Comments on SubPro Draft Final Report](#) (see tab 4 of spreadsheet)
- [Public Comments on SubPro Final Report](#)

V. Board Correspondence regarding the Facilitated Dialogue

- [6 Mar 2022 Letter from Maarten Botterman to Manal Ismail and Philippe Fouquart](#)
- [10 Mar 2022 Letter from Manal Ismail to Maarten Botterman](#)
- [30 Mar 2022 Letter from Maarten Botterman to Manal Ismail](#)
- [22 Apr 2022 Letter from Manal Ismail to Maarten Botterman](#)
- [27 Apr 2022 Letter from Philippe Fouquart to Maarten Botterman](#)
- [19 May 2022 Letter from Maarten Botterman to Philippe Fouquart](#)
- [19 May 2022 Letter from Maarten Botterman to Manal Ismail](#)
- [29 June 2022 Letter from Philippe Fouquart to Maarten Botterman and Manal Ismail](#)
- [25 July 2022 Letter from Maarten Botterman to Manal Ismail and Philippe Fouquart](#)