



Christine Willett, Fadi Chehadé and Cherine Chalaby  
Internet Corporation for Assigned Names and Numbers  
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August 21, 2013

Dear Ms. Willett, Mr. Chehadé and Mr. Chalaby,

On August 19, 2013, a number of gTLD applicants whose applications had been named in the Governmental Advisory Committee's (GAC) Beijing Communiqué as generic terms proposing to provide exclusive registry access (otherwise known as "closed generics") received a notice from ICANN asking those applicants to advise which of three scenarios applies to their application in question. Those three scenarios are as follows:

- "a) Your application indicates that you intend to provide exclusive access and you have no current plans to change that;*
- b) Your application indicates that you intend to provide exclusive access, but you want to submit a change request to provide non-exclusive access; or*
- c) Your application does not indicate that you intend to provide exclusive access."*

In the email, ICANN also stated that "An exclusive access registry is defined as a registry restricted 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)."

While this expanded definition of restricted access registry provides some additional detail, it still leaves a significant degree of ambiguity for many applied-for gTLD strings. Certain corporate applicants, for example, applied for gTLDs for use by their organizations and their affiliates, but also for use by licensees, partners, and even customers. Similarly, certain applicants plan to operate their gTLD exclusively for an initial period of time, but then open the registry up to a broader universe of registrants after a certain time.

FairWinds appreciates that ICANN has taken this important step to begin addressing the GAC's Advice about closed generics, but in order to make this process as constructive as possible, we request that ICANN answer the following questions:

- In the context of "exclusive access" does "Affiliates" also include entities that have a contractual or partner relationship with the applicant? What about customers, in the case of corporate applicants?
- Does "exclusive access" refer only to the intentions stated in an applicant's application, or in its future operation of the gTLD as well? In other words, will there be punitive action taken against registries that offer registration but do not have any registrants outside of the operating entity and its Affiliates?
- What will the process for submitting a change request to provide non-exclusive access entail? How will those requests be evaluated?
- Will ICANN provide additional guidance about what minimum requirements applicants must meet in order to qualify as providing non-exclusive access?
- After ICANN gathers the information requested in this inquiry, what are its next steps?

Unfortunately, the continued uncertainty around the issue of closed generics has already caused some applicants to give up on the New gTLD Program and withdraw their applications. Without more clarity and information, ICANN risks losing more applicants and potentially valuable and successful new gTLDs. Closed generics, as a new model of gTLD that has previously not existed in the Domain Name System, offer an opportunity for innovation and benefits to Internet users. Because the New gTLD Program was developed with the purpose of enabling innovation, ICANN's actions around closed generic strings carry significant consequences for both this and future expansions of the gTLD space.

Given the tight timeline for applicants to submit a response to this inquiry, we appreciate your timely response. We look forward to working with ICANN to continue to move this process forward.

Regards,  
Elizabeth Sweezey  
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FairWinds Partners