



gTLD Development and Response Team

ALERT

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New gTLDs Program: Public Comment Period on “Closed Generic” Top-Level Domains Ends March 7

The Internet Corporation for Assigned Names and Numbers has been seeking public comments on “closed generic” top-level domain applications and the adoption of specific requirements for this type of application since Feb. 5, 2013, as a result of concerns about the impact on competition and consumer choice of “closed” registries. Closed generic TLDs are TLD registries that are operated only for the benefit of the owner and its affiliates and are not open to the public. Concerns regarding closed generic registries have centered on competition and public access and were first raised during the general public comment period following the announcement of the new gTLD application and in Early Warnings from the Governmental Advisory Committee. Acknowledging that no policy now exists governing closed generic-term TLDs, ICANN has sought stakeholder views, specifically including comments helping to define objective criteria for determining whether a string is generic, classifying applications for closed generic TLDs, and determining the circumstances under which an operator should be permitted to adopt open or closed registration policies for a generic TLD. The deadline for submitting comments to ICANN on the subject of closed generic TLDs is March 7, 2013, at 11:59 p.m. UST. ICANN also has requested that the Generic Names Supporting Organization provide guidance on the issue by March 7, 2013.

Of the 1,960 applications for TLDs, 60 percent were for strings based on generic terms - terms not specifically based on a trademark or brand. In addition, the vast majority of strings with multiple applications are for common words or generic terms, such as .HOME, .ART, .SHOP, .BABY and .LOVE. (Read our alert on ICANN's preliminary string contention sets [here](#).) Some applicants for these common generic term strings have indicated that, should they be successful, they intend to operate their registries on a restricted basis. For

example, at least one application for .BOOK, .MUSIC, .BLOG and .CLOUD indicates that the applicant would limit or restrict registrations in the domain. Exactly how many applicants intend to operate closed generic TLDs remains unclear, in part because “closed” was not an ICANN-defined category in the application process. Rather, applicants provided information on how they intended to operate their registries, and some indicated more restrictive uses than others.

Critics opposed to allowing registry operators to restrict the registration of second-level domains in TLDs (e.g., COUNTRY.MUSIC, with “COUNTRY” being the second-level domain) based on common or generic words argue, among other assertions, that doing so is contrary to the purpose of the New gTLD Program to broaden access to the Internet, is against the public interest, and allows registrants to foreclose the use of common words or generic terms by others, without possessing any intellectual property rights, allowing them to circumvent the legal processes for obtaining trademark protection. Those in favor of allowing closed generic domains counter that the “openness” or “closedness” of a registry is a business decision appropriately left to the operator of the registry, that restrictions on registrations already exist at the second level and should be extended to the top level, and that requiring open registries for domains based on generic terms would unfairly impose restrictions on the business models and operations of the owners of those TLDs. Supporters of closed generic TLDs also argue that allowing closed generic domains does not constitute a circumvention of trademark protections, since domain names are not trademarks, and exclusive use of a generic string does not confer trademark rights.

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According to the public comment [announcement](#), however, defining a category of strings as generic is not as simple as it seems, since “strings may have many meanings and have implications for several languages.” Following the close of the comment period, ICANN will review and analyze the submitted comments and will issue a report on the feasibility of and alternatives for objectively classifying applied-for TLDs as closed generic TLDs.

Comments may be submitted using this link: comments-closed-generic-05feb13@icann.org.

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