

**ICANN
Transcription
New gTLD Subsequent Procedures Sub Group B
Tuesday, 05 February 2019 at 17:00 UTC**

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Julie Bisland: Good morning, good afternoon, good evening, everyone. Welcome to the new gTLD Subsequent Procedures PDP Sup Group B Call held on Tuesday, the 5th of February, 2019. In the interest of time, there will be no roll call. Attendance will be taken by the Adobe Connect Room. If you are only on the audio bridge at this time, could you please let yourself be known now? Jeff, I have you noted. Anyone else? And I just want to remind everyone to please state your name before speaking for transcription purposes and please keep your phones and microphones on mute when not speaking to avoid any background noise. And with this, I will turn it back over to you, Rubens. You can begin.

Rubens Kuhl: Thank you. Good time of day, everyone. For today we have selected the topic of Closed Generics, so we are looking at item 2.7.3, Closed Generics, which is also the name of the tab in our Google doc which has the link on the Adobe room. So if people could go to there while we go to other administrative procedures in the meeting, it will be interesting if the Google doc is already open when we start. First of all, as everyone knows, will recall, we have for the agenda for today, the agenda has 2 parts. Discussion on 2.7.3 Closed Generics, finishing that if time permits, and other business. Does anyone have any change to the agenda that they would suggest? Well at this point, it doesn't seem anyone has anything to add to the agenda, but when time comes to AOB, please feel free to add those there.

Does anyone have any statement of interest that needs to be updated or was updated already? Either in the Adobe Chat or acknowledging someone. Seeing none, so then we can go directly to item 3 on our agenda which is discussing Closed Generics. So much fun ahead of us today. We will start at line 4. Even though it's traditional that different parts or sections when we've had lots of green and even agreements, some of them didn't have any qualifiers. In this section we really need to

come with something that comment should find out. In the case of MARQUES, although they agree, they suggest that when Closed Generics are allowed, considering that the application is not anti-competitive and even so the application is in the public interest, that the applicant should be required to submit a Public Interest Commitment which would be part of Specification 11 that Closed Generics would not be used in a competitive manner. So there is an agreement with qualifier.

We have a comment from Mike Rodebaugh which was actually submitted to the workgroup during discussions of the report. Although agreeing, they say the decision, how it was made in 2012 was contrary to GNSO policy and AGB which allowed closed generics.

I would add that the board didn't actually allow them. They actually punted them down to us in the GNSO working group, so it's up to us to decide fate of those applications which is different from almost any other ICANN charter. Our charter is 99.9% about subsequent procedures. New processes whether they are around continuous operation process, but there are 2 items. One is name collision on the second level and the other is Closed Generics. So this one is really up to us.

And Mike Rodebaugh's comment was in line 5, so going to line 6, there is a concern stated by the ICANN Board, the meat part of it is, because of difficulty in defining public interest and public interest goals, they reemphasize it remains critical for subsequent procedures group, us, to further flesh out these concepts in our proposed adoptions for addressing closed generics. So yet again they are punting them to us and saying good luck on deciding on what to do with this problem.

The Registrar Stakeholder Group, which is on the next line, mentioned that most of the membership did not support Closed Generics. Some noted it should only be allowed as tangible benefits to end user. So a little divide among their membership providing which criteria would make it to be allowed and others saying what should make it not be allowed.

Next on line 8 we have a comment by Christopher Wilkinson which is an elect member making comments on behalf of ALAC at this time. He said during discussions of the initial report, some divergence mostly opposing Closed Generics. And although he commented that the board decision in the last round was enough, actually the board decision was not to make a decision. And just to correct myself, Christopher is an at large member, not an ALAC member. ALAC is the at large leadership, so sorry for that.

We have also on the next line, line 9, another of Christopher's comments that a closed TLD would be okay if the applicant already holds a global right to the name. Which would imply some form of trademark or some right, user's right, that is actually the opposite of what Closed Generics is and categorized as a diversion.

We also had comments from Vanda Scartezini, the next line, also a reproduction of the discussion we had. Those conversations are also diverging from the idea of having Closed Generics. So these were overall overarching comments to Closed Generics, not directly related to questions in the initial report. Is there any comment? Seeing none, so let's go to 2.7.3.c.1 which is the subject of Closed Generics has proved to be one of the most controversial issues tackled by Work Track 2 with strong arguments made by both these in favor of allowing closed generics in subsequent rounds and those opposing Closed Generics in favor of keeping the current ban. Because the PDP was charged not only by the GNSO Council to analyze the impact of Closed Generics and consider future policy, a number of options emerged as potential paths forward with respect to Closed Generics, though the Work Track was not able to settle on any one of them. There options are presented in (d) below. The Work Track notes that there may be additional options that are not included in this list and welcomes suggested alternatives.

First turning to those in support for allowing Closed Generics in future rounds were BRG, the Brand Registry Stakeholder group. Google basically agrees with allowing for Closed Generics. Not that the others disagreed, but those agreed without any major qualification. While IPC, GAC and Neustar had some agreement, but some qualifications they would like us to look into. The idea from IPC on line 15 that there is room to explore the aspect of Closed Generics for further discussion. Of the paths forward being explored, the IPC believes that Closed Generics would be appropriate where (1) a substantial public interest is served; and (2) unintended security and stability issues are not introduced (which SSAC may identify). The IPC would support an option as in 2 or 3.

The GAC made the qualification that they re-affirm the previous advice that for strings representing generic terms, exclusive registry access should serve a public interest goal. And Neustar contributed their agreement but added an idea that any new policy providing a mechanism for Closed Generics should be available to existing Registry Operators as well as future applicants. Which might or might not be in our charter. We will need to look into that in a day or two to verify our allowance to look into the 2012 round would allow us to go that far. It might or might not. I won't take a quick guess now not to analyze it further. But for that same suggestion, the ALAC expressed divergence. ALAC believes that ICANN should prohibit the use of closed generics if it is not coupled with a Public Interest Application, because closed generic TLDs allow an applicant to have a potentially unfair influence over registration priority in a generic term, such as "app". Although there will be no such application next round because app is already delegated. The mention that closed generics can exist but they may introduce unintended security and stability issues which the SSAC should weigh in on. And although it's the second comment that would welcome SSAC contribution, I don't believe that any one of them were made in that regard. So if those groups feel that it's really important to get SSAC to weigh in on this, they should probably

reach out to SSAC and see if they can comment something that they could send to the working group. Any comments regarding that section?

Seeing none, we move to Section 2.7.3.d.1 which has the option of not having any Closed Generics at all. Recommendation was to formalize GNSO policy, making it consistent with the existing base Registry Agreement that Closed Generics should not be allowed. We had support for that from XYZ that said this opinion is including but limited to XYZ. Also opposition from the Brand Registry Group and from INTA, Neustar, Registry Stakeholder Group and IPC. But let's look at each specific reason. Brand Registry Group said that they oppose, while INTA, the International Trademark Association says they oppose formalizing a no Closed Generics GNSO policy because of the definition of a Closed Generic as defined in Specification 11.3.d of the Registry Agreement. There is potential for adverse effects on brands, consumer protection and choice.

Next it had the comment from Neustar that they do not support for additional Closed Generics and they say that the position of support for Closed Generic would encourage competition and innovation. The Registry Stakeholder Group, as Neustar already mentioned, disagreed and in summary they said the Registry Stakeholder Group strongly disagrees with a rule against Closed Generics in future application windows. IPC also diverges, although they express there is room to explore for Closed Generics and therefore does not support an absolute ban of Closed Generics. Then, next you see there is a long, long comment from -- just a second. Maybe we need to get a different file to get that, but basically, it's also no support for Closed Generics as well. Anyone have any hands? Jeff. Go ahead, Jeff.

Jeff Neuman:

Thanks, this is Jeff Neuman. I thought maybe Jim raised his hand for the same reason. Let's -- there's a discussion going on on the chat about the ALAC comment in c.1, line 18. And there's a question from people as to whether we should get the SSAC, is this an action item for the SSAC? So Jim brought that up and maybe that's why he's got his hand raised. But we should probably talk about whether we should have an action item. I'm not sure, just as a personal opinion, not as chair but just personal, I'm not sure that just because the ALAC has asked for SSAC or the ALAC has somehow equated this to dot list domains, I'm not sure. I don't understand the connection. But the ALAC seems to be asking for SSAC input. The SSAC obviously could have provided input, but didn't in this case. So the question is whether we should get as an action item an opinion from the SSAC. Thanks.

Rubens Kuhl:

Thanks, Jeff. Just to be clear, what I mentioned while I was reading that, I was suggesting ALAC and IPC to reach out for SSAC if they want SSAC to comment on it, not for the workgroup. I don't see it as an issue to the working group at this point. Both SSAC and ALAC, both ALAC and IPC mention it, but SSAC didn't comment anything. So I don't see why we

should reach out to SSAC. They were expecting SSAC to comment and they didn't, so that was my suggestion. Please go ahead, Jeff.

Jeff Neuman: Yeah, I mean I have no problem reaching out and just sending a note saying that 2 groups have wondered or asked whether there was any security, but I wouldn't put it as a stop gap saying that we must get it before we can move on with this issue. But there's no harm in sending a note over to -- we can take it on as action item, see if they want, if they do have comments on it. They may choose, again, not to comment. Thanks.

Rubens Kuhl: Thanks, Jeff. I see Gene said that qualified for them. Any other comments? If not, we go to 2.7.3.d.1 -- no, actually 2.7.3.d.1 is exactly what we are looking at. So let's go back to the -- well Kristine has her hand up. Please go ahead, Kristine.

Kristine Dorrain: Hi, thanks. This is Kristine Dorrain for the transcript. I just had to step away for just a second and I came in at the tail end of that and I thought we were talking about the registry stakeholder group as a comment about the SSAC. As one of the drafters of the RySG comment, I just wanted to highlight that I don't think the RySG was calling for an SSAC review as much as any code of conduct changes that would be made should generally observe and security and stability recommendations of the SSAC that might exist. So I don't think we were calling for anything there as much as we were just observing that of course anything we would want to do, we'd want to comply with any SSAC comments. Thanks. And it looks like I maybe was taking about the wrong line. Sorry about that. Thanks.

Rubens Kuhl: Thanks, Kristine for that reporting. It was mentioned by ALAC and IPC and the Registry Stakeholder Groups was mentioned as 14, Closed Generics. So next suggestion on 27 it's 2.7.3.d. Closed Generics with Public Interest Application: As stated above, in the initial report, GAC Advice to the ICANN Board was not that all Closed Generics should be banned, but rather that they should be allowed if they serve a public interest goal. Thus, this option would allow Closed Generics but require that applicants demonstrate that the Closed Generic serves a public interest goal in the application. This would require the applicant to reveal details about the goals of the registry. Under this option, Work Track 2 discussed the potential of an objections process similar to that of community-based objections challenging whether an application served a public interest goal. The Work Track recognized how difficult it would be to define the criteria against which such an application would be evaluated.

For that option we have support from ALAC, although want a provision or factor that they support Closed Generics with the associated public interest specifications. IPC also supports a path forward where Closed Generics support public interest. The International Trademark Association also agreed, but in agreeing that have a new idea. They suggest possibly a more workable solution might be to have a challenge/objection process

whereby a party who thinks the particular closed generic is against the public interest could object. Where applying for a TLD string which might be considered a closed generic, and where the applicant envisages a risk of challenge, the applicant would have the option (but not the obligation) of trying to head this off in advance by giving assurances in the application which could be incorporated as contractual commitments. It would also be possible to allow an applicant to offer such contractual commitments in response to an objection, which the panel could take into consideration. And just a comment from me, although this is mentioned here as a new idea, this is basically the idea of Closed Generics with public interest applications, just in different terms.

After that, we had a comment from the Registry Stakeholder Group not supporting this option. which was line 31. And they also offer one hybrid option that could work for some Registry Operators that want to use a TLD for beta testing for a period of time (instead of trying work within multiple limited registration periods) before the Registry Operator opens the TLD up to an open or open-restricted TLD.

So actually have different moments in the lifetime of the TLD where it could be initially closed and then move it to a more open or selected or verified or community TLD with registration restrictions. And next, line 32, we have also divergence from Neustar mentioning that such disclosure would also disclose business plans and possible proprietary information and that would be assessed publicly against some nebulous criteria of "public interest". Next, BRG also did not agree with that option, but with no qualifiers.

Any comments on 2.7.3.d.2? Not seeing any at this time, but if anyone has some afterwards, we can go back here. On 2.7.3.d.3, we have another option which is Closed Generics with Code of Conduct: That option would allow for Closed Generics but require the applicants to commit to a code of conduct that addresses the concerns expressed by those not in favor of Closed Generics. This would not necessarily require the applicant to reveal details about the goals of the registry, but it would commit the applicant to comply with the Code of Conduct which could include annual self-audits. It also would establish an objections process for Closed Generics that is modelled on community objections. We have support for this option from Neustar, MarkMonitor, IPC and ALAC. Then we have the very last comment on this from Participants of the Asia Pacific Internet Governance Academy and most of what they suggest is that if the application concerns the matter of public safety, public security, intellectual property, protection should be considered within the scope of Closed Generics. And they provide the idea of a standing committee for code of conduct, that standing committee should consist of entities who have experience on domain registration process as well. So a suggestion can be made to include members from regional/countrywise domain registries in the standing committee. The implementation of code of conduct should not be affected with biased decisions from any of the said representatives above.

The duties of such standing committee would be to review the terms from time to time. So the perception for being a Closed Generic might shift over time with changes of culture and social norm. It is necessary to constantly review and update the terms in Code of Conduct in a responsive manner. The adoption of public opinion would be review the terms, reasonable length of time should be allocated for public comments. Applied new gTLD list should be published for general public so that they can vote (down vote/up vote) for each gTLD through a voting mechanism. This will provide a quick overview.

And, establish a report mechanism in case of any violation of the Code of Conduct, the report mechanism could serve as a channel for public to report registries' misbehaviors. All cases should be investigated in a timely manner and investigation outcomes should be released to the public.

So that's what they had in line 39 I believe. Yes. The Registry Stakeholder Group had agreed but provided caution. Although they support Closed Generics, they mention that the community cannot imagine the unimagined and that Code of Conduct should make sure that the operator of Closed Generic space observes the security and stability recommendations of SSAC.

We also have divergence from INTA which believes that this proposed process is overly burdensome and proposes that the process could be overly burdensome on registry operators, and to single out Closed Generic operators with a different Code of Conduct than other operators, that could be problematic and unworkable. And that's what we have from 2.7.3.d.3. And we have a hand from Jeff. Please go ahead, Jeff.

Jeff Neuman: Thanks, this is Jeff Neuman. I'm looking at the INTA comment and I know we classify it as divergence. They do diverge in the sense they don't like a Code of Conduct, but they do support the notion of Closed Generics. And I think it's more of a new idea to put it in the form of PICs as opposed to a Code of Conduct. So I'm not sure I would classify it as divergence. I mean, yes, they do say they don't want a code of conduct, but I just want to make it -- this option seems to have the most agreements with it, I just don't want to make it sound like there's someone that completely opposes this option. Because I'm not sure it's in that category if that makes any sense.

Rubens Kuhl: Thanks, Jeff. For now, I believe the previous option had more green than not green on this one, but both the previous option and this option looks like that's one we could move ahead because they seem to at least be the least favorite option instead of the other ones that usually carry a good number of divergence from very distinct parts of the community. Not seeing any other hands, then I think we already changed that to concern.

Let's go to 2.7.3.d.4 which is the option to allow Closed Generics with no additional conditions but establish an objections process for Closed

Generics that is modelled on community objections. The IPC agreed, they mention that they support Closed Generics as a path forward. There will be those very much prone to which of the path forward it took, but instead of having one. Business Constituency agrees to this option. The International Trademark Association also agrees with this option because there is a clear definition of Closed Generics development, they consider this option to be the most workable. And the United States Postal Service also agreed. The United States Postal Service also agreed that this Closed Generics are allowed should be an objection mechanism relates to public interest. So they support the idea of having an objection process, but not having that many changes after all if that would be action process. Then line 47, we have divergence from Neustar. Neustar does not support the introduction of additional objection process. And while they don't comment why, after what people suffered in legal and the objections that were handled by IPC, I can relate to that. The Registry Stakeholder Group said they do not support this option. They supported the Code of Conduct feature as the other option, so maybe they don't support the option of only having an objection process or even having one objection process.

And the ALAC also opposed this option but for a different reason. They said they are not in favor of an open season on Closed Generics for the reasons outlined in the other options. So in this case, they seem more concerned with having Closed Generics, but with some objection process than with still the objection process itself. So they don't seem to agree that having that path would be a workable option for Closed Generics.

Not seeing any hands, we then go to line 50, 2.7.3.e.1 which is what are the benefits and drawbacks of the above outlined options? So it basically asks some of the stakeholders, either repeat the argument for either for or against those options. But we can use this for to have a consolidated position of each stakeholder. The first response is from the Registry Stakeholder Group. They believe the Code of Conduct together with existing pre- and post-delegation objection and dispute mechanisms will serve to mitigate any abuse that people opposed to closed generics are concerned about. ICANN should focus on increasing competition, not decreasing it. That was the understanding of the Registry Stakeholder Group.

The Business Constituency mentioned that their opposition to Option 1, which includes closed generics with no objection mechanism. They agree with Option 4 but they also mention their support of Option 4. But at least in this comment, they don't mention the other 2 options, which goes to their notion that those are the 2 options with some kind of central to the stakeholder groups in this comment. That's my personal view.

The INTA commented, made a reference for comments they made above and they didn't provide any summary of those, but what the comment said, they support allowing Closed Generics with this option. But basically

after all with no requirements. And they didn't support having a Code of Conduct, they opposed having a Code of Conduct.

The IPC mentioned one new idea, mentioned that it's impossible to fully evaluate alleged harms without first seeing their effect. So by allowing Closed Generics in the public interest, a positive outlook can be observed and then it may be assessed whether or not there are drawbacks. So basically it's a trial idea, where allowing Closed Generics would be allowed on a trial basis and then just go back to policy making.

Then there is a comment that was attributed to the Public Interest Community that they oppose Closed Generics wholesale. So no Closed Generics if it's up to them. So that does it for 2.7.3.1. Any questions, comments, specifically on 2.7.3.1? I see that there is an interesting chat conversation that we can follow on another path and move to 2.7.3.2 at line 56 that mentions that Work Track 2 noted that it may be difficult to develop criteria to evaluate whether an application is in the public interest. For options 2 and 3 above, it may be more feasible to evaluate if an application does not serve the public interest. How could it be evaluated that a Closed Generic application does not serve the public interest? Please explain.

And we had agreement from Neustar that it would be more appropriate to evaluate whether a TLD harms the public interest. Have agreement from the Registry Stakeholder Group that the proper test should be there will be harm to public interest. We had an idea from the IPC, although they agree with it, first and foremost, it is necessary to affirm that what is played out as criteria of not serving the public interest be in line with ICANN's bylaws. They mention making a connection from the ICANN Bylaws to mention what does not serve public interest. And we have a comment from the Public Interest community that no Closed Generics, period.

Any comments from anyone? Not seeing none, let's go to 2.7.3.e.3. which is line 61. For option 2.7.3.d.4 above, how should a Code of Conduct for Closed Generics serving the public interest be implemented? The Work Track sees that adding this to the existing Code of Conduct may not make the most sense since the current Code of Conduct deals only with issues surrounding affiliated registries and registrars as opposed to Public Interest Commitments. It's more about equal treatment of registrars than of anything else. The Work Track also believes that this could be in a separate Specification if Closed Generics are seen as a separate TLD category. At this point, some ICANN Org employee cried of someone mentioned a new model of Conduct to them. Would it be better to modify the current Code of Conduct or have a separate Code of Conduct for Closed Generics? Please explain.

International Trademark Association support the idea of a separate Code of Conduct. Then they added, if the working group were to recommend the adoption of a code of conduct, then it makes sense for this to be

separate code of conduct specifically relating to the operation of a closed generic. Just a note that INTA opposes the idea of Code of Conduct, but if a Code of Conduct ends up being approved, they mention how they think it should be dealt.

Neustar mentioned that if a Code of Conduct is implemented, it should be separate to the existing Registry Operator Code of Conduct which is also the opinion of the Registry Stakeholder Group and IPC. And while we have here on line 66 the mention that Public Interest Community said no Closed Generics for the reasons set out above, they don't seem to be actually answering the question that was asked, that if the option of a Code of Conduct should be separate or not. They are just restating their opposition to Closed Generics, which is their right. But possibly not answering this question, so I would not classify this as a diversion, actually not to this option, but an overall opposite to Closed Generics.

And this is what we have so far. Any comments? Questions? I believe we have completed our session time, which we only have 9 minutes left. I don't know if people think it's worthwhile to start String Similarity at this point or leave it for another session, another day, meeting? I think this is a good place to stop, so that's it unless anyone has any other business that we should discuss. I'll give people some time to type or think if they have any other business. We have a question from Anne Aikman-Scalese. We have dates for the last 2 topics which I will defer to policy staff.

Steve Chan: Hey, Rubens, this is Steve from staff. We actually have more than 2 topics left. Let me go ahead and check what we have. So obviously we have String Similarity as the next topic, but in addition to that, we have IDNs, Security & Stability, Applicant Reviews and Name Collisions as the very last topic. So actually if you scroll -- or I'm sorry, if you take a look at the Google doc where all these comments are being reviewed, if you scroll over to the very far left, you can see a draft work plan. And it might need a little bit of revision, but it should be mostly up to date. So you can see how it hopefully lays out for the next few meetings. Thanks.

Okay, I see what you're asking. Sure, I can add these to that. Thanks, Anne.

Rubens Kuhl: Oh, now I know that I was talking to myself with mute. Anne, please go ahead.

Anne Aikman-Scalese: Thanks. It's Anne. I'm just trying to clarify what are those dates. Because we have 2 topics that don't have any dates assigned to them and I was wondering what those dates are. Thanks.

Cheryl Langdon-Orr: Anne, perhaps I can jump in and help. It's Cheryl here. Obviously, the calendar went out for February which makes perfect sense, and then there was a natural break at March when they, staff, would have wanted to not have the calls go out over the travel time and the attendance at ICANN64. So I suspect, if you want to, the leadership will obviously

confirm, you may squeeze one meeting in in the first week of March which is the next natural time to have one anyway. That's the week of the 5th of March. And then it would be a break in the weekly meetings until you get back from Kobe and it's traditional to give you all at least one week's breathing space after. So the schedules will go out, but I would be slightly assuming that you may as well get at least one of those topics if not both of those topics, done on the meeting at the 5th of March. Actually, you might want to consider having a 90-minute meeting to ensure that you do so. Thanks.

Rubens Kuhl: Thanks, Cheryl. Seeing that the scheduling issues have all been commented and not seeing any other business, there is a question from staff, would it be possible to have those meetings during ICANN Kobe? I don't know, that depends on how much time we have allotted for the full teams and see if it's better to have face to face time to go into that. Perhaps not. Cheryl seems to think the same, but let's not rule it out completely, but not think of it as the most likely option ahead. Seeing no other comments, just thank you all for participating today. Have a good time of day, everyone and we can also stop the recording. Bye-bye.

Julie Bisland: Thank you, Rubens. Everyone, have a good rest of your day. This meeting is adjourned.