March 6, 2013

Thank you for the opportunity to comment regarding "closed generic" gTLD applications, and whether specific requirements should be adopted for those types of applications.

For the following reasons, it is our view that no specific requirements regarding closed generic applications should be implemented.

First, this is not a new issue, but one that was known when the current New gTLD process was developed. As recent comments by members of the Generic Names Supporting Organization Council at its February 14 teleconference make clear, the issue of whether closed generic applications should be permitted has previously been considered by GNSO, and "it was not the idea of the GNSO nor should it be the responsibility of ICANN to restrict the use of TLDs in any manner."[i] Ms. Lentz acknowledged this when she remarked in the background section of the Public Comment Announcement that "[t]he New gTLD Program has been built based on policy advice developed in the GNSO's policy development process" and that "[t]he policy advice did not contain guidance on how ICANN should place restrictions on applicants' proposed registration policies, and no such restrictions were included in the Applicant Guidebook." It is fundamentally unfair to change the rules now. Strategies were developed and decisions were made under the assumption that closed generic applications were permitted. To change that now would put certain entities and their applications at a decided disadvantage.

Second, the concepts of "closed" and "generic" are not well suited for bright line tests. For example, if an entity does not make second level domain names on its registry available to the public, but rather sells advertising space on those domains to the public, would the entity's application be considered "closed"? And when is a TLD string "generic"?   When it refers to an industry, like "real estate"? When it refers to a product, like "car"? When it refers to an activity, like "basketball"? What if it refers to something that is both an industry and product, like "radio"? The point is that both concepts -- "closed" and "generic" -- are complicated, with many shades of gray. There are many points of view (the fact that virtually none of the comments received to date proposes categorical definitions is telling), and it strikes us as virtually impossible to develop criteria that are fair and well thought through at this stage.

Third, subjecting "closed generic" applications to new criteria raises a number of sensitive administrative and financial issues. Would companies be permitted to amend their applications, and if so, would that be fair to other applicants? If a company chose not to amend its application, or if that were not permitted, would application fees be returned? What about companies that have paid consultants significant fees for assistance in preparing closed generic applications in reliance on the current Guidebook? A number of similar issues would beg an answer.

Finally, we note that many of the comments received on this topic suggest that closed generic applications frustrate competition. Those comments seem to assume that the proper place for competition among domain names is at the second level. We disagree. The New gTLD application process *promotes* competition by making it possible for virtually any entity to apply for virtually any Top Level Domain. Subject to the advantages that are provided to community oriented applicants and to other sensible limitations regarding trademarks, security, and the like, the New gTLD application process

operates on a free market basis. Those entities that find value in a particular Top Level Domain can apply for the right to operate it and, if necessary, bid against other entities for that right. In our opinion that is the most effective way to promote competition.

Again, thank you for the opportunity to comment on this matter.

Sincerely,

Mike Moroney
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Progressive Casualty Insurance Company

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[i] See transcript, ICANN Moderator: Glen de Saint Géry 02-14-13/5:00 am CT Confirmation # 4859648, pages 49-59, available on ICANN web site.