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Re: Personal contribution to the Closed Generic Public Comment Request

I am a member of the Non-Commercial Users Constituency (NCUC), however I am submitting my personal contribution on the ICANN public comment request over the new 'closed generic' gTLD application process. As Managing Director of Global Identity Ltd, Scotland, my role is setting up authentication protocols between different members and the discovery service through semantic querying of its members' ontological tags. I am also a representative in the process of setting up a gTLD Scottish Governance Board.

I understand that there has been considerable controversy over the remit with regards to the 'closed generic' TLD application process. While I fully support the development of the Internet and need to extend the gTLD process, I am also cautious of the long-term implications once a motion has been set in place.

I recognize that it has been the long-standing aim of ICANN to encourage competition amongst registry operators and that the current model on the sales of second level domain name registrations is widely accepted. It is my view that the introduction of the 'closed generic' model, would be the enablement of a new model. As such I consider that there has not been an informed evaluation on how this new model would affect or even possibly diminish the current 'working' model. It is my view that this proposed new model could potentially diminish the objective set by ICANN to encourage competition at the compromise of the existing business model.

Akin to the introduction of a new species in a stable eco-system, I remain to be persuaded as to what evaluation process was carried out to determine the type of business impact this will have on the existing ICANN domain name eco-system.

While ICANN may not profess to be a regulatory or investigatory body with the authority to evaluate how the DNS affects competition law of consumer law, with the integration of "closed generic" gTLD application, it is devising new policies and has a new dispute resolution process, which will have an affect and change the

balance of what will become the new acceptable practice for managing brands and registered TM over a global reach. Thereby showing its long-term competence in mandating how the visible element to search and find on the Internet should unfold, ICANN is also in this capacity, asserting and assuming its Global authority over DNS monopoly concerns.

The lack of clarity how certain closed registries will operate their DNS monopoly with search engine operators, is an understandable concern to the existing eco-system and this type of innovation sets an unprecedented global dominance in favor of a small number of existing dominant market organizations, over what I perceive to be the defining point of origin within the protocol (DNS architecture) of the Internet. Within this context, it cannot be argued that consumer choice will not be compromised, by a new form of DNS architecture, that looks to dominate entire market sectors. Nor can the difference between a “generic product dot com” and a “dot generic product” be equate as having a similar market value, when the latter has the possibility of commanding an entire suite of “generic product dot generic product”.

I understand that there are also concerns expressed over what would be the distinctive difference between “dot brand” and a “dot generic”, my view is that the current ecosystem has granted due to the TM registration process and existing market prominence recognition for the purpose of business continuity, the means for TM registered brands to secure a gTLD. However, the criteria “for the purpose of business continuity and the means for TM registration”, while not explicitly defined in the Application Guide Lines, was the defining factor for granting “dot brand”. However on the basis of a common assumption ill defined, further “dot generic” registry operators sought to benefit and exploit the common understanding held reading between the lines, to gain unfair advantage without the need to provide evidence of their market presence under the “generic” term, nor stand the test of time or have a TM.

I believe that the remit of ICANN is to continually evaluate in the “publics interest”, (without having to re-evaluate annually what the definition of “public interest” or “rights” are), how the gTLD and DNS continues to provide a stable Internet of services. It is therefore my view, that the current proposed “closed generic” model, has the means of upsetting the existing stability of services and creating unfair advantage, by wielding a new form of **Industry Directory Model** in favor of the exclusive interests of the existing few.

The investment required to engage in the gTLD application process and sustainability means that every business will be operating exclusively for its own benefit to ensure it secures profits, to not operate at a loss.

While we don't know how consumers will adapt to the new gTLD role out, the level of consumer awareness to the existing likely changes are poor, what we do know is that the predominant use of search engines is a defining factor how the majority of consumers search the Internet. Therefore if a new Industry Directory Model, is to be

introduced, then surely this is a “public interest” and a Governmental matter.

Further more, if a new Industry Directory Model were to be introduced, then the value of a “generic words” becomes a recognizable new ‘premium’ and I cannot see how that means of granting a premium with the means of international exclusive rights without cross- examination between different languages, could take place without creating a long-term disorganized **International Directory**.

Considering that ICANN will be facilitating the means of operating a mass **New International Directory Model** granting the “closed generic” application extension. Surely in this instance ICANN has also developed and expanded its current role and remit, by introducing if not under its own authority the need to create a **Directory Regulatory Body**.

It is my view that the Internet has challenged the basis of International and national laws, especially in the area of jurisdiction and that ICANN effectively granted the means for international visibility and reach in the interest of continuity through the gTLD application process.

I understand the commercial necessity of the gTLD process, I ask therefore:

If the ICANN Code of Conduct mandates still holds regarding:

1. The exemption’s second prong mandates that: “Registry Operator [shall] not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator.” Notably, the prior ICANN definition of “affiliate,” refers to relationships solidly grounded in joint management, joint ownership and employees.<sup>1</sup>
2. The Registry may not: Register domain names in (their) own right.<sup>2</sup>
3. The Registry must provide non-discriminatory access to Registry Services to all ICANN accredited registrars.<sup>3</sup>
4. The Registry Operator may request exemption to this Code of Conduct, and such exemption may be granted by ICANN in ICANN’s reasonable discretion, if Registry Operator demonstrates to ICANN’s reasonable satisfaction that ... application of this Code of Conduct to the TLD is not necessary to protect the public interest.<sup>4</sup>

Then the following areas remain to be addressed with purposeful guidelines to safeguard the further extension of the current gTLD application guidelines, Code of Conduct and New Registry Agreement:

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<sup>1</sup> See New Registry Agreement, Section 2.9 (c): ‘Affiliate’ means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, and (ii) “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise. (<http://newgtlds.icann.org/en/applicants/agb/baseagreement-specs-04jun12-en.pdf>)

<sup>2</sup> Section 1

<sup>3</sup> Section 2.9

<sup>4</sup> Section 6

1. If generic words are registered by TM owners, who are not the lawful owner of that generic word or has a TM registration over it, then the current intent and purpose for the 'closed generic' gTLD is currently not appropriately accounted for in policy or guidelines, (interjection) if it was in the first instance acceptable to register a 'closed generic' gTLD. This suggests that there has been an abuse and extension of the current New gTLD guidelines, which must be accounted for.
2. The current purpose and intent of the 'walled garden' approach for each 'closed generic' gTLD, for the sole use of the applicant, has not been defined in the current guidelines. Therefore as with the initial intent and use of existing gTLD's, the code of conduct of 'sole and perpetuity rights' have yet to be evaluated, discussed and decided within the ICANN stakeholder model.
3. The privatisation at the exclusion of public access or future right of access to the Domain space of the gTLD, and/or is in the 'public's interest' will need to be explained by the applicant.
4. How will the search engines react to a predominance of gTLD's under the pre-dominance of certain key organisations for example, if they dominate under every domain content regarding the list of goods and services.
5. How in the 'public interest' will there be a balanced non-bias representation in the page listings under each search term made in the URL, for good and services pertaining to baby, hair, cloud services, book etc... if exclusive rights are exercised by a predominant Registry.
6. What will be the economic impact on non-commercial not-for profit organisations and NGO's within the market space allocated to the 'closed generic' terms gTLD's. Has this impact assessment report been made publically available, in the "public interest". This is especially important in relation to areas pertaining to babies health, vaccines appropriate to babies which relates Global aid for children and awareness campaigns issues.
7. A list of 'closed generic' gTLD was not readily available and there is ambiguity of the extent of 'closed generic' gTLD applications, how is this still an outstanding issue.
8. Certain assumptions of usage have been drawn for the known 'closed generic' gTLDs, how can a fair and informed public comment be made based on assumptions over the assignation or privatisation of 'generic' words.

In light of the foregoing concerns, I respectfully ask that there should be a review process:

- To establish whether the current ICANN guidelines were defined enough regarding the means for "closed generic" gTLD application to be submitted.
- Of all the 'closed generic' gTLDs applications and their individual intent, purpose and usage, to determine whether they should either be open or withdraw for a full refund.

I also propose that the economic impact assessment report on the "closed generic" new terms of use, to be made available.

Respectfully Submitted,

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