Dear Directors and Liaisons,

Please find the notice of the following New gTLD committee meeting:

Date & Time — 26 March 2013 — 13:00 UTC (est. duration – 2 hours)
http://www.timeanddate.com/worldclock/fixedtime.html?msg=New+gTLD+Committee+Call&iso=20130326T13&p1=1440&ah=2

ID:

Adobe Connect room:

1 - Approval of Minutes of Feb 1 & 2, 2013
2 - TMCH Contract with IBM
3 - Update on 'Closed Generics'
4 - Functional audit of the New gTLD program and process
5 - Time and frequency of New gLTD Program Committee meetings
6 - IGO Protection Issue

Please let me know if you require a dial-out from the Adigo Operator.
Adigo call-in numbers:

Contact Information Redacted

Contact Information Redacted

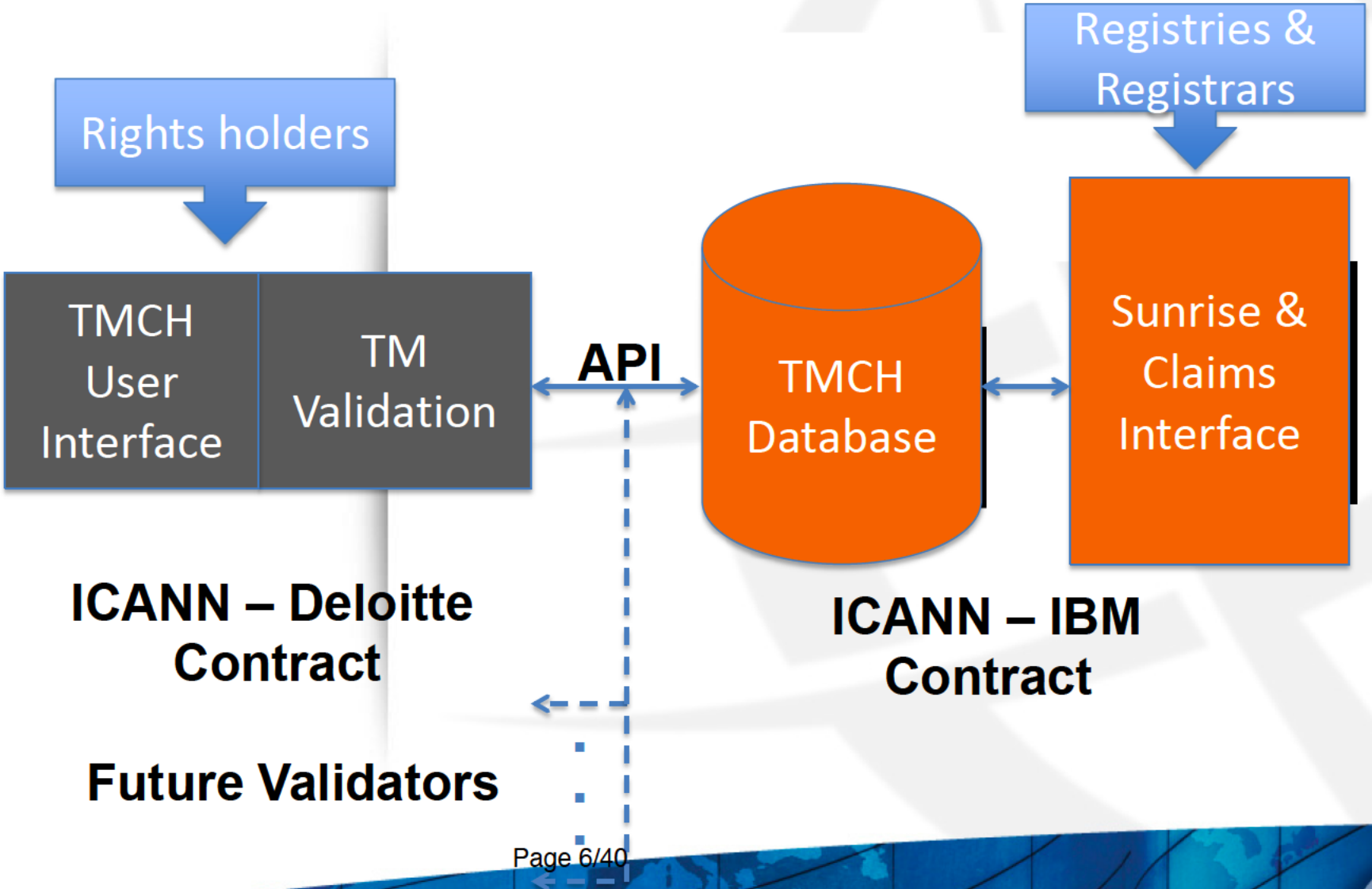
Contact Information Redacted

TMCH-IBM-Agmt-20mar13.pdf

Trademark Clearinghouse Contract with IBM

20 March 2013

Contractual Framework



Negotiations and Cost Reductions

- Negotiations concluding on Sunrise/Claims statement of work
- ICANN taking on setup function, invoicing and payments from registries/registrars
  - Reduces registry cost of participation from over $10,000 to $5,000 per TLD
  - Eliminates cost for registrars altogether
- ICANN providing some guarantees

Commercial model

- ICANN guarantees $2Million from TLD participants in Sunrise services
  - 400 TLDs over 5 years
  - ICANN will invoice all the contracted TLDs the $5k fee, collect and pay IBM
- ICANN pays $400k per year for 5 years covering the fees of all registrars participating in the TMCH for a total of $2M
- Transactional fee $.30 per successful domain registration during Sunrise/Claims periods – also passed through

Recommendation

Confidential Negotiation Information

- Board's approval required for financial commitment
- Approval sought from NGPC so that implementation can proceed prior to next meeting in Beijing

Proposed Resolution

Whereas, ICANN and IBM have negotiated in good faith the terms for a proposed statement of work for operation of the Sunrise and Trademark Claims services offered by the Trademark Clearinghouse;

Whereas, the New gTLD Program Committee has reviewed the terms of the proposed Statement of Work for ICANN;

Whereas, approval is required to commit ICANN funds in the amount of USD 4 million;

Whereas, execution of the agreement enables continuation of the technical buildout to support these services for the New gTLD Program;

Resolved (2013.03.26.NGxx), the New gTLD Program Committee authorizes the President and CEO to enter into the proposed agreement with IBM.

Thank You

One World

One Internet

Questions

2013-03-18-03-new-gtld-comm-Board paper-gTLD-closed generic overview.doc

New gTLD Program Committee Submission 2013-03-18-03

TO:	**New gTLD Program Committee**
TITLE:	**"Closed Generic" gTLD Applications**
PROPOSED ACTION:	**For Review and Discussion**

EXECUTIVE SUMMARY

At its meeting on 2 February 2013, the New gTLD Program Committee passed a resolution on the topic of "closed generic" applications, including directing certain research and analysis and opening of a 30-day public comment period. This paper provides a review on stakeholder feedback received and analysis performed since this date and considers various options for next steps.

A. STAKEHOLDER INPUTS

1. GNSO Advice

The 2 February resolution requested the GNSO to provide guidance on this issue during the 30-day period if it wished to do so.

The GNSO provided input on 7 March 2013[1] as follows:

> It is the view of the GNSO Council that, given the relatively short timeframe, it is not possible for the GNSO Council to provide policy guidance on this issue with the appropriate levels of consideration and consultation.
>
> In addition, the Council would like to point out that, although the GNSO did not explicitly consider the issue of "closed generic" TLDs as part of the new gTLD PDP, we recall that the issue of restricting new gTLDs was, in general, considered and discussed. At that time, it was the view within the GNSO that it should not be the responsibility of ICANN to restrict the use of gTLDs in any manner, but instead to let new gTLD applicants propose various models; open or closed, generic or not.

2. Public Comment

[1] See http://gnso.icann.org/en/correspondence/robinson-to-crocker-chalaby-07mar13-en.pdf

This topic generated significant interest and resulted in extensive, in-depth comments considering the issues. The comments received featured both strong concerns about the prospect of "closed generic" gTLDs, and strong concerns about introducing new requirements or limiting the benefits of the New gTLD Program by being overly restrictive on business models. A few comments responded to the request for suggested objective criteria for classifying applications as "closed generic." A review of the comments has been provided under separate cover.

3. Independent Objector

The objection filing period on applications closed on 13 March 2013. The Independent Objector published a statement indicating that he had considered the issue of "closed generic" applications and decided not to file objections to applications on this sole ground.[2] The IO statement noted that "the core question is whether applicants, generally being companies and corporate entities, can have the benefit of a new gTLD string for their own use, notwithstanding the general use of the term by the public."

The IO statement noted the issue as a significant one, but considered that the issue of "closed generic" gTLDs did not fall within the scope of the IO's functions, noting, for example, that "Indeed, I have strong doubts that the question of closed gTLDs is related to the problematic (*sic*) of public order: the issue might be linked to commercial interests, it is not directly linked with the freedom of expression."

B. ADDITIONAL INPUTS

1. Analysis of Previous Policy Discussions

The 2 February resolution directed staff to review materials supporting the policy development process resulting in the GNSO policy recommendations on the Introduction of New Generic Top-Level Domains and provide analysis of any discussions relating to the limitations on potential new gTLDs. As was discussed previously, the GNSO did not directly address or evaluate the concept of "closed generic" TLDs. The GNSO's policy development work focused primarily on issues associated with the strings that may be awarded (e.g., limitations based on trademark,

[2] See http://www.independent-objector-newgtlds.org/english-version/the-issue-of-closed-generic-gtlds/

morality/public order, or community concerns), rather than the manner in which the gTLDs would be operated. There is evidence that the idea of "closed generic" TLDs was discussed in the Vertical Integration Working Group.

As such, the review of previous policy discussions did not yield guidance to address the issue going forward. However, the GNSO's input noted above did specify that "at that time, it was the view within the GNSO that it should not be the responsibility of ICANN to restrict the use of gTLDs in any manner, but instead to let new gTLD applicants propose various models; open or closed, generic or not." The full review of policy materials is provided under separate cover.

2. Feasibility of Classifying Applications

The Committee's 2 February resolution directed staff to analyze the feasibility of objectively classifying applied for TLDs as "closed generic" TLDs. This analysis indicates that although it is possible to create definitions of the terms "closed" and "generic" as they relate to gTLD applications, it would be difficult to objectively apply such definitions to create criteria for "closed generic TLDs," for a number of reasons. Information in some applications is imprecise as to the intended registration policies (although this could be addressed by gathering additional information from applicants to support a determination of whether an application qualifies as "closed generic"). In addition, what is generic is likely to vary across languages and jurisdictions as well as changing over time. Similarly, it is possible to establish criteria for what is to be considered a "closed" registry; however, there may be various permutations of this which might require case by case review and consideration. The full analysis is provided under separate cover.

3. Public Interest and International Law Considerations

The Committee's 2 February resolution directed staff to provide an analysis as to whether the public interest and principles of international law are served by adopting a clear approach regarding "closed generic" gTLDs. It is agreed that a clear approach is most in line with the public interest and principles of fairness.

RECOMMENDATIONS

Based on this feedback and analysis, the Committee may wish to consider a set of alternatives, as described below.

a. The Committee may move forward with the Applicant Guidebook as approved and implemented. This position would be supported by the GNSO guidance, as well as public comment on the difficulty of introducing new requirements into an established process, and the view that the current approach permits innovation that is expected to be beneficial. If it takes this approach, the Committee should acknowledge those who provided thoughtful input in response to the request, and explain its rationale for continuing to rely on the established processes.

   As part of (a), the Committee could elect to issue a statement articulating a position on "closed generic" applications as a matter of principle. This could indicate, for example, that ICANN will move forward with the Applicant Guidebook as approved and implemented (i.e., is not introducing any new requirements) but wishes to provide a public statement on its view of "closed generic" applications in light of the goals of the New gTLD Program. This could also include a clarification that to the extent that competition issues arise in the space, these can be addressed by the relevant competition authorities.

b. The Committee may request the GNSO to undertake a policy development process. Under the ICANN Bylaws, the GNSO is responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains. A request for a PDP could take the form of either (i) putting the New gTLD Program on hold until policy recommendations have been issued, or (ii) continuing the execution of the New gTLD Program with the

placeholder that additional requirements may be introduced based on policy recommendations from the GNSO. This could require that a subset of applications be pre-identified as impacted by the policy development process, resulting in a two-stage process.

c. The Committee may elect to introduce evaluation requirements or to implement the Code of Conduct exemption process in such a way as to restrict registries from being "closed." For example, a position could be taken that ICANN will not grant exemptions to certain types of applications. This position would be supported by those comments suggesting that ICANN should intervene in support of principles such as openness, competition, and consumer choice. This would require additional work on the process and criteria to achieve the desired outcome. For example, the Committee may direct staff to do additional investigation of the suggestions on criteria for classification of applications that were provided in the feedback received. This would require additional resources and would most likely have an impact on the program timelines as well as extending uncertainty for applicants.

As noted in previous papers, there continue to be differing interpretations of the Registry Code of Conduct and the exemption process to this. Regardless of the direction pursued by the Committee, it is recommended that ICANN provide clarification in these areas.

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2013-03-18-02-new-gtld-comm-gTLD-closed generic update.doc

New gTLD Program Committee Submission 2013-03-18-02

TO:	**New gTLD Program Committee**
TITLE:	**Comment on "Closed Generic" gTLD Applications**
PROPOSED ACTION:	**For Review and Discussion**

EXECUTIVE SUMMARY

At its meeting on 2 February 2013, the New gTLD Program Committee passed a resolution on the topic of "closed generic" applications, including directing certain research and analysis and opening of a 30-day public comment period. The comment period was abbreviated to minimize operational impact on the program timelines.

This paper provides an initial summary of the public comments received through the comment period. At the time this paper was submitted, 253 comments had been received. The themes of comment are described according to clusters of comments that were identified as described below.

Generic terms as a form of public space. A number of comments expressed the view that certain words or types of words belong to all and should not be the province of one entity based on a gTLD application. These comments considered it inappropriate for any applicant to seek a TLD for a word widely used by multiple entities around the world.

Relevance of trademark law. Many comments cited principles of trademark law, considering the allocation of TLDs as analogous to the process of issuing trademarks and urging that the same type of doctrines should apply, i.e., a term that could not be trademarked should also not be issued as a TLD operating in a "closed" fashion. Comments expressed concern that a failure to apply established principles of trademark law to the handling of gTLD applications would mean circumventing or undermining accepted procedures for obtaining intellectual property rights and trademark protections.

Principles of the New gTLD Program. Many comments urged ICANN to maintain a principle of fairness to applicants, who invested in the preparation of applications in

reliance on the requirements of the Applicant Guidebook. Comments noted that adopting a new policy for closed generic TLDs at this stage would be inconsistent with the spirit of openness and transparency used in developing the program. These comments cited the recommendation found in the GNSO's policy recommendations and the GAC Principles that: *The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency, and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.*

Impact on competition and consumer choice. A number of comments expressed the concern that "closed generic" TLDs would have a negative impact on competition by intensifying influence held by large companies and market dominant players, and creating additional inequities between the developed and developing worlds. Some comments also expressed the concern that "closed generic" TLDs would reduce or limit consumer choice or would cause confusion due to the varying business models in the space. Comments also noted a potential impact on certain industries – groups of commenters from booksellers, security/alarm companies, cloud service providers, and others expressed concern that the exclusivity implied by a closed generic model would be detrimental to the industry.

Benefits of innovation. Several comments suggested that new types of TLDs could be beneficial as a source of innovation. These comments favored latitude for prospective registries to choose their business models, rather than imposition of restrictions by ICANN. Some comments cited previous economic analysis performed in development of the New gTLD Program indicating that innovation and new services are beneficial to the public. Comments noted the potential for greater benefit from competitive pressure than from efforts to limit types of permissible business models.

ICANN's mission and functions. A number of comments approached the topic in terms of the appropriate role of ICANN. Some expressed that ICANN is not a competition authority and should rely on the proper channels to resolve any competition issues that may emerge. Other comments suggested that adoption of rules for "closed

generics" would lead ICANN into content, and that ICANN should only be making policy determinations related to its technical functions.

Definitions for "Closed Generics." Comments that addressed this element of the request for public comment generally took the view that it would be extremely difficult to define what is generic in a way that would be effective and appropriate across global regions. Comments noted that creating a standard approach would require consideration of uses and meanings of terms in many languages, and also noted a need to account for the possibility that what is generic will change over time. Other comments suggested that principles of trademark law could provide a foundation for making meaningful distinctions regarding the nature of the terms under consideration.

Additional suggestions. Additional suggestions for approaching this issue included, defining the conditions under which any TLD would be permitted to be "closed," allowing applicants to demonstrate non-genericness by showing trademark registrations in some minimum of countries, using public information to identify which terms represented an industry, and granting a limited initial period during which any TLD could operate in a "closed" manner.

Requests for additional time. A handful of commenters requested that ICANN extend or re-open the comment period, or institute the usual reply period, to allow for adequate consideration of the issues.

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Pages 23/40 – 37/40, containing Privileged and Confidential materials, were intentionally removed

2013-03-26-13-NGPC-Protection of IGO Names-BIP.docx

Protection of IGO Names & Acronyms at the Second Level
Board Information Paper

Executive Summary: On Friday, 22 March 2013, the GAC submitted advice to the ICANN Board setting out the criteria and the corresponding final list of IGO names and acronyms for protection at the second level in the current round of New gTLDs. There are two major issues for consideration. First, the list of acronyms includes generic words, acronyms used by multiple organizations, and acronyms that are problematic for other reasons. Second, the "Criteria for Protection" document indicates that the names and acronyms should be protected in multiple languages but leaves as "TBD" the list of languages. If the Board and GAC cannot resolve these issues in Beijing and/or are required to enter into a bylaw-required consultation, there is a significant risk of delay to the New gTLD Program.

Detail: The GAC submission consists of three documents: 1) Letter from the GAC chair; 2) Criteria for Protection; and 3) a spreadsheet listing the organizations and acronyms to be protected.

GAC Letter. The GAC Letter makes two important statements. First, it states that the agreed criteria and "final" list are to be used for protections "at the second level in the current round of gTLDs." Second, it invites the Board to "seek clarification as the Board looks at the practical application of the contents of the list in the current round."

Criteria for Protection. The eligibility criteria[1] are broader than those required for .INT registrations but significantly narrower than what the IGO coalition sought (protection for all IGO subordinate entities). The "Criteria for Protection" document appears however to be inconsistent with the GAC Letter in at least three important respects:

- List not final. Unlike the GAC Letter, this document suggests that the list is not final because the languages in which the names and acronyms are to be protected are "TBD." The criteria document also creates an ongoing process to review the list prior to any subsequent New gTLD rounds or every three years, whichever is first. By contrast, the GAC letter suggests that the precision of the criteria "should enable greater certainty as to the completeness of the list and avoid creating an ongoing process."
- Duration of protection. The criteria document requires protections for the listed names and acronyms at the second level "in all rounds of new gTLDs" and at the top level "in all except the first new gTLD round." By contrast, the GAC chair letter and the Board resolution call for temporary protections at the second level during the first round only.

[1] The "Criteria for Protection" document prohibits third parties from acquiring any names and acronyms used by "International Organizations" at the top or second level without express written consent from the relevant International Organization. The document defines "International Organization" ("IO") as one that meets one of three criteria: (1) treaty-based organization with legal personality; (2) an "intergovernmental organization" that may participate as an observer in UN General Assemblies; or (3) a UN entity, organ or program.

- Reserved List or Prohibition against third-party registration The criteria document prohibits only "third party" registration of protected names and acronyms absent permission from the relevant IO. This level of protection is not the same as a reserved list which would bar all parties from registering the protected names and acronyms.

IGO List. The list of acronyms contains several entries that are also generic words, acronyms used by multiple organizations, and acronyms that are problematic for other reasons. The IOs insist on protection of the acronyms against third-party registrations unless they approve a request in writing. Examples of acronyms, with the protected organization listed first:

- BIS (Bank for International Settlements; prefix or suffix designating the second instance of a thing)
- CAN (Andean Community; Canada; verb and noun in English)
- CFC (Common Fund for Commodities; US federal employee-funded Combined Federal Campaign; chlorofluorocarbon; Christian Fellowship Church)
- ECO (Economic Cooperative Organization; applied-for string; prefix mostly relating to ecological or environmental terms)
- EPO (European Patent Office; European Patent Organisation; Erythropoietin (doping drug)
- EUCLID (EUCLID University; Greek mathematician; chemical company; city name)
- GCC (Cooperation Council for the Arab States of the Gulf; GNU Compiler Collection; abbreviation of several colleges and universities; applied-for string; GreenHaven Continuous Commodity Index Fund (GCC), an Exchange-Traded Fund (ETF); Gulf Coast Conference)
- ICO (International Coffee Organization; Sony PlayStation video game; image file format for computer icons in Microsoft Windows; UK Information Commissioner's Office; International Council of Ophthalmology)
- IDA (International Development Association; Institute for Defense Analysis; International Dyslexia Association; a Windows, Linux or Mac OS X hosted multi-processor disassembler and debugger; In Defense of Animals; International Downtown Association)
- IDEA (International Institute for Democracy and Electoral Assistance; a noun; Individuals with Disabilities Education Act (US law); IT consulting and solutions company (idea.com); blog (idea.org) that promotes the role of technology in advancing scientific & cultural literacy
- ISO (International Sugar Organization; International Organization for Standardization; film speed; archive file of an optical disk)
- LAS (League of Arab States; airport code for Las Vegas, NV; Legal Aid Society; plural article in Spanish)
- MIGA (Multilateral Investment Guarantee Agency; breadcrumb in Spanish)
- PAM (Parliamentary Assembly of the Mediterranean; cooking spray; name short for Pamela)
- UNIDO (UN Industrial Development Organization; Spanish word for united)
- WHO (World Health Organization; rock band; pronoun; broadcast television company; magazine; Dr. Who television programme)