

# Report of Public Comments

<b>Title:</b>	<b>“Closed Generic” gTLD Applications</b>		
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<b>Prepared By:</b>	ICANN staff		
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<b>Staff Contact:</b>	Karen Lentz	<b>Email:</b>	<a href="mailto:karen.lentz@icann.org">karen.lentz@icann.org</a>
<b>Section I: General Overview and Next Steps</b>			
<p>ICANN is seeking public comment on the subject of "closed generic" gTLD applications and whether specific requirements should be adopted corresponding to this type of application. Stakeholder views are invited to help define and consider this issue. In particular, comments would be helpful in regard to proposed objective criteria for:</p> <ul style="list-style-type: none"><li>• classifying certain applications as "closed generic" TLDs, i.e., how to determine whether a string is generic, and</li><li>• determining the circumstances under which a particular TLD operator should be permitted to adopt "open" or "closed" registration policies.</li></ul> <p>The New gTLD Program Committee of the ICANN Board of Directors has discussed this issue and has also directed completion of a set of focused research and analysis items to inform any possible action to be taken.</p> <p>This feedback is being reviewed and analyzed, along with the research requested, to determine the appropriate next steps.</p>			
<b>Section II: Contributors</b>			

*At the time this report was prepared, a total of [number] (n) community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.*

**ORGANIZATIONS & GROUPS:**

<b>Name</b>	<b>Submitted by</b>	<b>Initials</b>
Retail Council of Canada	Dave Wilkes, Senior VP, Government Relations & Grocery Division	DW
Get New TLDs Inc. (GetNewTLDs)	Mary Iqbal	MI
Property Casualty Insurers Association of America (PCIAA)	David M. Golden , Senior Director, Commercial Lines	DGM
Booksellers Association of Switzerland	Dani Landolf, General Manager	DL
Booksellers Association of UK & Ireland Ltd.	Sydney Davies, Head of Trade & Industry	SD
Lanvac Surveillance Inc. (Lanvac Surveillance )	John Georgoudes, President	JG
Surveillance Lanvac Monitoring	George Georgoudes	GG
Deister Electronics	Rikk Boldy, General Manager	RB
Lanvac	Robert LeDuc, Executive Vice President	RL
L'Aquila Electronic Systems Inc. (L'Aquila Electronic Systems)	Joseph Rossano, Security Advisor	JR
Houle Electric Limited--Security Division (Houle Electric)	Levis Veilleux, CET, Senior Project Manager/Estimator	LV
Precision Protection Systems	Dwayne Richardson	DR
Keystone Security Systems Inc. (Keystone Security Systems)	Jack Shore	JS
Safe Tech Inc. (Safe Tech)	Sean O'Leary, President & CEO	SO
Cairn Control Systems	Carol Cairns, CMA	CC
Safe Home Security		
Affordable Lock Services Inc. (Affordable Lock Services)		SD
Unit4 Business Software	Sanjeev Shah	SS
Infynia.com	Jean Pierre Reid	JPR
Secur-Icare Inc. (Secur-Icare)	Michel La Barre	ML
Wilson's Security	David C. Wilson, President	DCW
McCarthy Institute	David Franklyn, J. Thomas McCarthy	DF, JTM
Channel Cloud UK/Ireland	Paul Byrne, CEO	PB
European and International Booksellers Federation (EIBF)	Francois Dubruille, Director	FD

Barnes & Noble, Inc. (Barnes & Noble)	Eugene V. DeFelice, VP, General Counsel & Corporate Secretary Bradley A. Feuer, VP, Assistant General Counsel	EVD, BAF
Moon Security Services, Inc. (Moon Security Services)	Michael A. Miller, President	MAM
Northern911	Mike Shantz, VP Operations	MS
Cloud Industry Forum	Andy Burton, Chairman	AB
Concorde Solutions Ltd. (Concorde Solutions)	Martin Prendergast, CEO	MP
Inter IKEA Systems B.V. (IKEA)	Martin Broden, Senior Legal Counsel	MB
Webroot Services Ltd. (Webroot)	George Anderson, Senior Product Marketing Manager	GA
Spanish Bookseller Federation	Fernando Valverde, President	FV
Syndicat des Distributeurs de Loisirs Culturels (SDLC)	Jean-Luc Treutenaere, President	JT
Canadian Security Association	Danielle Paquin, Regional Director	DP
Federation of European Publishers (FEP)	Anne Bergman-Tahon, Director	ABT
Flexiant Ltd. (Flexiant)	Alex Bligh, COO & CTO	AB
Trustmarque	Simon Rutt (S. Rutt)	SR
Booksellers New Zealand	Lincoln Gould, CEO	LG
Noncommercial Stakeholders Group Members (NCSG Members)	Dr. Milton Mueller et al.	MM
SuperMonopolies dot com	Dave Tyrer, Founder	DT
Zumex	Carina Garcia	CG
Libreria Camara	Javier Camara, Director	JC
Booksellers Association of Andalucia	Juan Manuel Cruz Galvez, President	JMCG
Libreria Iberoamericana Vervuert	Klaus D. Vervuert	KDV
Tek Systems Group	Dave Stevenson	DS
VMware UK Limited (VMware)	Gavin Jackson, Senior Director-EMEA	GJ
Libreria Delta		
Repiso Libros	Javier Lopez Yanez	JLY
Libreria-Papeleria La Parada	Juan Gonzalez Rodriguez	JGR
Quorum Libros	Jose Luis Jaime Serrano	JLJS
Latvian Booksellers Association, Latvian Book Guild & Latvian Publishers Association (Latvian Booksellers & Publishers)	Inara Belinkaja	IB
Comic Stores	Miguel Angel Diaz Aguilar	MADA
Libreria La Isla S.L. (Libreria La Isla)	Maria Ermitas Lago Solla	MELS
Borsenverein des Deutschen Buchhandels e.V.	Alexander Skipis, Managing Director	AS
Compare The Cloud Limited (Compare the Cloud)	Daniel Thomas	DT

Dot Food LLC (Dot Food)	Christopher Parrott, CFO.	CP
Libreria El Naranjo	Andres L. Munoz Jurado, Owner	ALMJ
Indigo Books & Music Inc. (Indigo Books & Music)	Kathleen Flynn, General Counsel	KF
Irish Internet Association (IIA)	Joan Mulvihill, CEO	JM
Libreria Hijos de Santiago Rodriguez S.A. (Libreria Hijos de Santiago Rodriguez)	Lucia Alonso Rodriguez	LAR
Libreria Diogenes	Juan Miguel Salvador	JMS
Libreria de Deusto	Agueda Gago Arrastia	AGA
Libreria Luque	Javier Luque	JL
Libreria Clarin		
Libreria Ayala Papeleria	Eduardo Mtz. De Estarrona	EMdE
Libreria Llorens Llibres	Rosana Lluch, General Director	RL
Libreria Kiriku y la bruja	Ester Madronero	EM
Federation Against Software Theft (FAST)	Alex Hilton, CEO	AH
Libreria El Pinar	Juan Arriaza Jimenez	JAJ
Alarm Industry Communications Committee (AICC)	Louis T. Fiore, Chairman	LTF
Kobo Inc. (Kobo)	Nick Catros, SVP Business and Legal Affairs	NC
Alibaba Group	Karen Law, Legal Counsel	KL
Slovenian Booksellers Society	Ingrid Celestina, President	IC
Libreria Casa Ruiz-Morote		
Booksellers Association of Bizkaia	Elkar Megdenda, President	EM
Booksellers Association of Spain	Pilar Gallego, President	PG
Swedish Booksellers Association	Anna Moller Wrangel, CEO	AMW
APM Group Ltd. (APM Group)	Mike Jenkins	MJ
Matrix42	Mark Lillywhite, EMEA North Technical Manager	ML
Libreria Taiga	Alberto Sanchez	AS
Libreria El Libro Tecnico y Libreria Casa del Lector	Carolina Sanchez Suarez	CSS
Libreria La Luna Nueva Libros	Cristobal Serna Donaire	CSD
DMH Stallard LLP (DMH Stallard)	Frank Jennings, Partner	FJ
Outsourcery	Piers Linney, Co-CEO	PL
Libreria Joker	Fernando Tarancon, General Director	FT
UK IT Association (UKITA)	Andrew Corbett, Board Director	AC
Arrowhead Systems Ltd. (Arrowhead Systems)	Mike Hollowell	MH
Business Constituency (BC)	Steve DelBianco	SD

AXA Group	Veronique Weill, Group Executive	VW
Information Technology and Innovation Foundation (ITIF)	Daniel Castro, Senior Analyst	DC
Michelin	Nathalie Dreyfus, Dreyfus & Associates	ND
Technology Policy Institute (TPI)	Thomas M. Lenard, President and Senior Fellow	TML
Intellectual Property Constituency (IPC)	Steve Metalitz	SM
At-Large Advisory Committee (ALAC)	Heidi Ullrich et al.	HU et al.
ThoughtWorks, Inc. (ThoughtWorks)	Jeremy Gordon, Associate General Counsel	JG
Yahoo! Inc. (Yahoo!)	J. Scott Evans, Head of Global Brands, Domain & Copyright	JSE
Booksellers Association of Asturias	Luis Martin, President	LM
Asociacion de Libreros de la Provincia de Las Palmas	Antonio Rivero Rodriguez, President	ARR
Catalan Bookseller Trade Union	Antoni Daura Jorba, President	ADJ
Asia Cloud Computing Association (ACCA)	Bernie Trudel, Chairman of the Board	BT
Accor	Nathalie Dreyfus, Dreyfus & Associates	ND
Rakuten, Inc. (Rakuten)	Maiko Morikawa, Manager, Global Public Policy	MM
Japan Association of New Economy (JANE)	Naohiro Inaba	NI
Dutch Booksellers Federation	Michael van Everdingen, Managing Director	MvE
Laboratoires de Biologie Vegetalee Yves Rocher S.A. (Yves Rocher)	Nathalie Dreyfus, Dreyfus & Associates	ND
ScienceLogic, Inc. (ScienceLogic)	Richard Chart, EVP Product Management	RC
Chubb Edwards	Bruce Bowlby, Marketing Manager	BB
Association of American Publishers (AAP)	Allan Robert Adler, General Counsel & VP for Government Affairs	ARA
Target Domain Holdings, LLC (Target)	Mark Wagner	MW
Open Forum Europe (OFE)	Graham Taylor, Chief Executive	GT
Domainoo		
NZICT	Kylie Pellet, Events and Marketing Manager	Kp
Intellectual Property Owners Association (IPO)	Herbert C. Wamsley, Executive Director	HCW
American Insurance Association (AIA)	Angela Gleason, Associate Counsel	AG
Entertainment Software Association, Entertainment Software Association of Canada	Christian Genetski, David Sweeney, Jayson Hilchie & Ron Curry	CG et al.

and Interactive Games and Entertainment Association (ESA et al.)		
Blacknight Solutions	Michele Neylon	MN
TLT LLP	Andrew Cave , Associate	AC
Syndicat National de l'Édition (SNE)	Christine de Mazieres, Director	CdM
Prudential Insurance Company of America (Prudential Insurance)	Dorothy C. A. von Hollen	DCAvH
United States Telecom Association (US Telecom)	Kevin G. Rupy, Senior Director, Law & Policy	KGP
American Intellectual Property Law Association (AIPLA)	Jeffrey I.D. Lewis, President	JIDL
Consumer Watchdog	John M. Simpson, Privacy Project Director	JMS
Electronic Security Association (ESA)		
United States Postal Service (USPS)	Anne Aikman-Scalese	AAS
International Trademark Association (INTA)	Claudio DiGangi, Manager, External Relations	CD
Allianz Group (Allianz)	Laurent Leclercq	LL
American Association of Independent Music & Worldwide Independent Network, et al. (A2IM & WIN et al.)	Rich Bengloff, A2IM President et al.	RB
.Music	Constantine Roussos, Founder & CEO	CR
Instituto Bruno Leoni (IBL)	Massimiliano Trovato	MT
Internet NZ	Susan Chalmers, Policy Lead	SC
Google, Inc. (Google)	Ben Fried, Vice President and Chief Information Officer	BF
TD Ameritrade, Charles Schwab & Co., Inc. & Teachers Insurance and Annuity Association of America (Financial Industry Members)	Helen I. Odom, Yusuf Cassim, Lisa J. Heller	HIO, YC, LJH
Coalition for Online Accountability (COA)	Steven J. Metalitz, Counsel	SJM
Microsoft Corporation (Microsoft)	Russell C. Pangborn, Assistant General Counsel-Trademarks	RCP
International Center for Law & Economics and Tech Freedom (ICLE & Tech Freedom)	Geoffrey A. Manne, Berin Szoka	GAM, BS
Latin American Telecom LLC (LAT)	Rami Schwartz, Founder & CE)	RS
CTIA-The Wireless Association (CTIA)	Michael Altschul, Senior Vice President & General Counsel	MA
Amazon.com (Amazon)	Stacey King, Sr. Corporate Counsel	SK
Progressive Casualty Insurance Company (PCI)	Mike Moroney, Corporate Counsel	MM
Authors Guild	Scott Turow, President	ST
MARQUES	Alan Ramsay, Secretariat	AR

Casa del Libro at Acala de Henares	Alberto Perez, Director	AP
Casa del Libro at Calle Arka	Amalur Bilbao Baltzategi, Director	ABB
Casa del Libro de Barcelona en Rambla de Catalunya	Aranzazu Garcia, Director	AG
Casa del Libro at Oviedo	Xurde Portilla Lejarza	XPL
Casa del Libro at Ponferrada	Antonio Villasol	AV
Casa del Libro at A Coruna	Anabel Bugarin Villar	ABV
Casa del Libro at Centro Comercial Salera Carretera Nacional	Cayetana del Pilar Moreno Perez	CdPMP
Casa del Libro at Centro Comercial Grancasa	Raul Blasco Santamaria	RBS
Casa del Libro at Acala	Alfonso Mariano Corso	AMC
Casa del Libro de Isla Azul	Antonio Higuera de Frutos	AHdF
Casa del Libro at Alicante	Fernando Alvarez Alonso	FAA
Casa del Libro at CC. Espacio Leon	Uriel Bonilla Suarez	UBS
Casa del Libro at Xanadu	Patricia Puertas Sanz	PPS
Casa del Libro at Fuencarral	Luis Santos	LS
Casa del Libro at Valencia	Jose A. Valverde	JAV
Casa del Libro at San Miguel	Hermelo Delgado Fernandez	HdF
Casa del Libro at Terrassa	Eduard Fernandez	EF
Casa del Libro at c/Nueva 5	Isabel Hernandez Gomez	IHG
Allstate Insurance Company (Allstate)	Robert Wasserman, Senior Vice President	RW
Casa del Libro at Plaza de Italia	Fernando Mora Tomas	FMT
International Publishers Association (IPA)	Jens Bammel, Secretary General	JB
Casa del Libro at C/Maestro Victoria	Oscar Calero	OC
Casa del Libro at Passeig de Gracia	Olga Cote Castro	OCC
Casa del Libro at Orense	Alfonso Santos Tabales	AST
Casa del Libro at C/Velazquez Moreno	Juan Carlos Febrero Gonzalez	JCFG
Langsecure Security		
Casa del Libro at Avda. de America	Luisa Martin Garcia	LMG
Libreriano Belvera		
American Booksellers Association	Oren Teicher, CEO	OT
Fitch Surveillance Systems	Jason Bere, IT Lead	JB
General Electric Company (GE)	Kathryn Barrett Park	KBP
Casa del Libro at Valladolid	Iris Riballo Hernandez	IRH

**INDIVIDUALS:**

Name	Affiliation (if provided)	Initials
George Kirikos (G. Kirikos)	Leap of Faith Financial Services, Inc.	GK
Rajuks		

Jennifer Thomas (J. Thomas)		JT
Keven Dabney (K. Dabney)		KD
Joey Perez aka Joey Fiero (J. Fiero)		JF
Carlos Mendoza (C. Mendoza)		CM
John G. Cassells (J. Cassells)		JGC
Paul Labelle (P. Labelle)		PL
Viral Patel (V. Patel)		VP
Dan		
George Girardello (G. Girardello)		GG
Sean McLeod (S. McLeod)	MBA, IT Governance Lead, Long View Systems	SM
Norman Fiset (N. Fiset)		NF
Andy Lyonette (A. Lyonette)		AL
Phin Pope (P. Pope)		PP
Bob Pianka (B. Pianka)		BP
Andrew Watson (A. Watson)		AW
Seth M. Reiss (S. Reiss)		SR
Ceo		
Brian Aamodt (B. Aamodt)		BA
Fernand Ernster (F. Ernster)	President, Luxemburgish Booksellers Association	FE
Silvia Teixeira (S. Teixeira)		STx
Tom Casey (T. Casey)		TC
Salanieta Tamanikawaiwaimaro (S. Tamanikawaiwaimaro)		ST
Mike Cairns (M. Cairns)		MC
Stuart Greig (S. Greig)		SG
Ian Moyse (I. Moyse)	Workbooks.com, Sales Director	IM
Brien Lampen-Smith (B. Lampen-Smith)		BLS
Max Cooter (M. Cooter)	Editor, Cloud Pro	MC
Frank Bennett (F. Bennett)		FB
Nicky Stewart (N. Stewart)	Commercial Director, Skyscape Cloud Services Limited	NS
Luke Goodchild (L. Goodchild)	Business Development Manager, Databarracks	LG
Andrew Buss (A. Buss)	Service Director, Freeform Dynamics	AB
Octavio Molano (O. Molano)		OM
Ray Fassett (R. Fassett)		RF
Phil Keown (P. Keown)	Grant Thornton UK LLP	PK
Phil Driscoll (P. Driscoll)	Managing Director, Dial Solutions	PD

	Ltd.	
Arne Babenhauserheide (A. Babenhauserheide)		AB
Robin Lauren (R. Lauren)		RL
Simon Griffiths (S. Griffiths)		SG
Jacqueline D. Lipton (J. Lipton)	Professor, University of Houston Law Center	JDL
Melvin I. Reynolds (M. Reynolds)	AMS Consulting	MR
Ron Miller (R. Miller)	SunGard Availability Services (UK) Limited	RM
Francis Kiernan (F. Kiernan)	NexusAB Ltd.	FK
Steve Cox (S. Cox)		SC
Tim Aschcroft (T. Ashcroft)	Director, Innovas	TA
Andrew Brenson (A. Brenson)	Independent consultant, NGO sector	AB
Mike Rodenbaugh (M. Rodenbaugh)	Rodenbaugh Law	MR
Bob McVeigh (B. McVeigh)	Security Solutions, Inc.	BM
Eric Gagne (E. Gagne)		EG
Jay P. Kesan & Carol M. Hayes (J. Kesan & C. Hayes)	University of Illinois at Urbana-Champaign	JK, CH
Jessica Barry (J. Barry)	Accreditor Coordinator, APM Group	JB
Mary Wong (M. Wong)	Professor, University of New Hampshire School of Law	MW
Rubens Kuhl (R. Kuhl)	NIC.br	RK
Mathieu Baudier (M. Baudier)	CEO/CTO Argeo.org	MB
David Bicket (D. Bicket)	m-Assure Limited	DB
Simon Robinson (S. Robinson)		SR
Varun Asher (V. Asher)		VA
Peter Prater (P. Prater_	Managing Director, QTAC Payroll Products	PP
Adam Wood (A. Wood)		AW
Jonathan Batty (J. Batty)	Technical Consultant-Symmetry Limited	JB
K.J. Mobberley		KJM
Roger Lancefield (R. Lancefield)		RL
Sam Johnston (S. Johnston)		SJ
Bruce W. Longbottom (B. Longbottom)	Assistant General Counsel, Eli Lilly and Company	BWL
Paul Tattersfield (P. Tattersfield)		PT
Kristina Macaulay (K. Macaulay)	Managing Director, Global Identity	KM
Ron Wickersham (R. Wickersham)		RW
Tom Gilles et al. (T. Gilles et al.)		TG

Swe.fb		
Thomas Drake-Brockman (T. Drake-Brockman)		TDB
Taylor		
Mitchell Snyder (M. Snyder)		MS
Aaron Merriam (A. Merriam)		AM
Guy Incognito (G. Incognito)		GI
Harsh Singh (H. Singh)		HS
Shawn K.		SK
Laurence J. Cohen (L. Cohen)	Latham & Watkins	LC

### Section III: Summary of Comments

*General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).*

### COMPETITION AND INDUSTRY TERMS

#### Anti-Competitive and Not in the Public Interest

Closed gTLDs for generic industry terms (e.g., .book, .security) are not in the public interest and should not be allowed.

*Retail Council of Canada (6 Feb. 2013); P. Labelle (27 Feb. 2013); Lanvac Surveillance (27 Feb. 2013); Surveillance Lanvac Monitoring (27 Feb. 2013); Lanvac (27 Feb. 2013); Dan (27 Feb. 2013); Houle Electric (27 Feb. 2013); Precision Protection Systems (27 Feb. 2013); Keystone Security Systems (27 Feb. 2013); Safe Tech (28 Feb. 2013); G. Girardello (28 Feb. 2013); Cairn Control Systems (28 Feb. 2013); Safe Home Security (28 Feb. 2013); Affordable Lock Services (28 Feb. 2013); Secur-Icare (28 Feb. 2013); N. Fiset (28 Feb. 2013); Wilsons Security (28 Feb. 2013); A. Lyonette (1 Mar. 2013); P. Pope (1 Mar. 2013); Northern911 (3 Mar. 2013); Ceo (4 Mar. 2013); Concorde Solutions (4 Mar. 2013); IKEA (4 Mar. 2013); B. Aamodt (4 Mar. 2013); SDLC (4 Mar. 2013); Canadian Security Association (4 Mar. 2013); T. Casey (4 Mar. 2013); Tek Systems Group (5 Mar. 2013); Dot Food (5 Mar. 2013); N. Stewart (5 Mar. 2013); Indigo Books & Music (5 Mar. 2013); IIA (5 Mar. 2013); FAST (5 Mar. 2013); Kobo (5 Mar. 2013); O. Molano (5 Mar. 2013); APM Group (6 Mar. 2013); P. Keown (6 Mar. 2013); A. Babenhausserheide (6 Mar. 2013); R. Lauren (6 Mar. 2013); S. Griffiths (6 Mar. 2013); S. Cox (6 Mar. 2013); Arrowhead Systems (6 Mar. 2013); AXA Group (6 Mar. 2013); Michelin (6 Mar. 2013); J. Barry (6 Mar. 2013); ThoughtWorks (7 Mar. 2013); Yahoo! (7 Mar. 2013); M. Baudier (7 Mar. 2013); ACCA (7 Mar. 2013); Accor (7 Mar. 2013); Rakuten (7 Mar. 2013); JANE (7 Mar. 2013); Yves Rocher (7 Mar. 2013); V. Asher (7 Mar. 2013); ScienceLogic (7 Mar. 2013); Chubb Edward (7 Mar. 2013); AAP (7 Mar. 2013); A. Wood (7 Mar. 2013); Domainoo (7 Mar. 2013); K.J. Mobberley (7 Mar. 2013); NZICT (7 Mar. 2013); AIA (7 Mar. 2013); TLT LLP (7 Mar. 2013); SNE (7 Mar. 2013); Prudential Insurance (7 Mar. 2013); Consumer Watchdog (7 Mar.*

2013); *ESA* (7 Mar. 2013); *USPS* (7 Mar. 2013); *R. Lancefield* (7 Mar. 2013); *S. Johnston* (7 Mar. 2013); *Financial Industry Members* (7 Mar. 2013); *Yahoo!* (7 Mar. 2013); *Microsoft* (7 Mar. 2013); *F. Bennett* (5 Mar. 2013); *LAT* (7 Mar. 2013); *CTIA* (8 Mar. 2013); *R. Wickersham* (8 Mar. 2013); *T. Gilles et al.* (8 Mar. 2013); *Langsecure Security* (9 Mar. 2013); *swe.fb* (10 Mar. 2013); *T. Drake-Brockman* (10 Mar. 2013); *Taylor* (11 Mar. 2013); *M. Snyder* (11 Mar. 2013); *A. Merriam* (11 Mar. 2013); *G. Incognito* (11 Mar. 2013); *H. Singh* (11 Mar. 2013); *Shawn K.* (11 Mar. 2013); *American Booksellers Association* (13 Mar. 2013); *Fitch Surveillance Systems* (13 Mar. 2013)

Closed gTLDs contradict ICANN's core values, including promotion of competition in the public interest. The public interest is particularly at risk in the case of generic terms that are defined by statute or other legal authority (e.g., IRA). While similar risks may arise in the context of individual domain names registered in .com, but the potential impact of a new gTLD string is much greater. By contrast to the registration of a .com domain name, a new gTLD requires ICANN approval and substantial resources, both for the application and for the operation of the gTLD. Search engines are likely to give priority to pages associated with a gTLD that appears to be dedicated to content related to the search terms and more likely to be controlled by an established, relevant institution. The stakes are higher regarding ICANN delegation of a gTLD, and the public interest concerns must weigh more heavily than they do for individual domain names. *Financial Industry Members* (7 Mar. 2013)

These strings should be open and unrestricted since generic words used in a generic way belong to everyone. Allowing such closed gTLDs would harm competition, limit consumer choice and confuse consumers.

*Retail Council of Canada* (6 Feb. 2013); *IKEA* (4 Mar. 2013); *SDLC* (4 Mar. 2013); *Dot Food* (5 Mar. 2013); *Indigo Books & Music* (5 Mar. 2013); *IIA* (5 Mar. 2013); *Kobo* (5 Mar. 2013); *Alibaba Group* (6 Mar. 2013); *Yahoo!* (7 Mar. 2013); *Accor* (7 Mar. 2013); *Rakuten* (7 Mar. 2013); *JANE* (7 Mar. 2013); *Yves Rocher* (7 Mar. 2013); *AIA* (7 Mar. 2013); *Blacknight Solutions* (7 Mar. 2013); *Allianz* (7 Mar. 2013); *CTIA* (8 Mar. 2013)

- Once closed gTLDs are delegated, it would likely be very difficult if not impossible to reverse such grants in the future, and the registry operator would be able to control gTLDs delegated to it perpetually and thereby be able to prevent others from operating a similar gTLD in the future (based on string confusion). *Retail Council of Canada* (6 Feb. 2013); *IKEA* (4 Mar. 2013); *Indigo Books & Music* (5 Mar. 2013); *Kobo* (5 Mar. 2013); *Yahoo!* (7 Mar. 2013)
- Delegation of closed gTLDs may violate ICANN's by-laws and the New gTLD Registry Operator Code of Conduct. The exemption that permits closed gTLDs was intended for brand TLDs, not generic words that are common industry terms. ICANN's core values include promoting competition in the registration of domain names. *Retail Council of Canada* (6 Feb. 2013)
- If an independent party holds the rights over such gTLDs and provides non-exclusive access through licensing or other arrangements, there is little reason for concern. Such an alternative would encourage competition by allowing a wide range of parties to access gTLDs that are based on common, descriptive terms, rather than allowing one dominant retailer to exclusively control such gTLDs. Registrations would be made on a first-come, first-served basis, subject to a sunrise period for trademark holders. *Retail Council of Canada* (6 Feb. 2013); *Indigo Books &*

*Music (5 Mar. 2013); Kobo (5 Mar. 2013)*

Closed gTLDs have to be invalidated when submitted by commercial entities operating in a sector of activity related to the closed generic gTLD.

*Booksellers Association of Switzerland (27 Feb. 2013); Booksellers Association of UK & Ireland Ltd. (27 Feb. 2013); EIBF (1 Mar. 2013); Spanish Bookseller Federation (4 Mar. 2013); F. Ernster (4 Mar. 2013); S. Teixeira (4 Mar. 2013); FEP (4 Mar. 2013); Libreria Camara (5 Mar. 2013); Booksellers Association of Andalucia (5 Mar. 2013); Libreria Iberoamericana Vervuert (5 Mar. 2013); Libreria Delta (5 Mar. 2013); Repiso Libros (5 Mar. 2013); Libreria-Papeleria La Parada (5 Mar. 2013); Quorum Libros (5 Mar. 2013); Latvian Booksellers & Publishers (5 Mar. 2013); Comic Stores (5 Mar. 2013); Libreria La Isla (5 Mar. 2013); Borsenverein des Deutschen Buchhandels e.V. (5 Mar. 2013); Libreria El Naranjo (5 Mar. 2013); Libreria Hijos de Santiago Rodriguez (5 Mar. 2013); Libreria Diogenes (5 Mar. 2013); Libreria de Deusto (5 Mar. 2013); Libreria Luque (5 Mar. 2013); Libreria Clarin (5 Mar. 2013); Libreria Ayala Papeleria (5 Mar. 2013); Libreria Llorens Llibres (5 Mar. 2013); Libreria Kiriku y la bruja (5 Mar. 2013); Libreria El Pinar (5 Mar. 2013); Slovenian Booksellers Society (6 Mar. 2013); Libreria Casa Ruiz-Morote (6 Mar. 2013); Booksellers Association of Bizkaia (6 Mar. 2013); Booksellers Association of Spain (6 Mar. 2013); Swedish Booksellers Association (6 Mar. 2013); Libreria Taiga (6 Mar. 2013); Libreria El Libro Tecnico y Libreria Casa del Lector (6 Mar. 2013); Libreria La Luna Nueva Libros (6 Mar. 2013); Libreria Joker (6 Mar. 2013); Booksellers Association of Asturias (7 Mar. 2013); Asociacion de Libreros de la Provincia de Las Palmas (7 Mar. 2013); Catalan Bookseller Trade Union (7 Mar. 2013); Accor (7 Mar. 2013); Dutch Booksellers Federation (7 Mar. 2013); Yves Rocher (7 Mar. 2013); Casa del Libro at Acala de Henares (8 Mar. 2013); Casa del Libro at Calle Arka; Casa del Libro de Barcelona en Rambla de Catalunya (8 Mar. 2013); Casa del Libro at Oviedo (8 Mar. 2013); Casa del Libro at Ponferrada (8 Mar. 2013); Casa del Libro at A Coruna (8 Mar. 2013); Casa del Libro at Centro Comercial Salera Carretera Nacional (8 Mar. 2013); Casa del Libro at Centro Comercial Grancasa (8 Mar. 2013); Casa del Libro at Acala (8 Mar. 2013); Casa del Libro de Isla Azul (8 Mar. 2013); Casa del Libro at Alicante (8 Mar. 2013); Casa del Libro at CC. Espacio Leon (8 Mar. 2013); Casa del Libro at Xanadu (8 Mar. 2013); Casa del Libro at Fuencarral (8 Mar. 2013); Casa del Libro at Valencia (8 Mar. 2013); Casa del Libro at San Miguel (8 Mar. 2013); Casa del Libro at Terrassa (8 Mar. 2013); Casa del Libro at c/Nueva 5 (8 Mar. 2013); Casa del Libro at Plaza de Italia (8 Mar. 2013); IPA (8 Mar. 2013); Casa del Libro at C/Maestro Victoria (9 Mar. 2013); Casa del Libro at Passeig de Gracia (9 Mar. 2013); Casa del Libro at Orense (9 Mar. 2013); Casa del Libro at C/Velazquez Moreno (9 Mar. 2013); Casa del Libro at Avda. de America (11 Mar. 2013); Libreriano Belvera (12 Mar. 2013); Casa del Libro at Valladolid (16 Mar. 2013)*

ICANN should only approve generic gTLDs on the condition that they are open to any company that seeks to register therein, or in special cases restricted to entities on a neutral basis (e.g. allow .bank to be limited to certified banks).

*McCarthy Institute (1 Mar. 2013); ACCA (7 Mar. 2013); NZICT (7 Mar. 2013); US Telecom (7 Mar. 2013); LAT (7 Mar. 2013)*

Open generic TLDs expand choice and free choice and free competition. Closed generic TLDs reduce choice, hinder competition and would undermine the goals of the trademark system which forbids

individuals to gain exclusive property rights in generic names of products and an unfair competitive advantage in the marketplace.

*McCarthy Institute (1 Mar. 2013); Yahoo! (7 Mar. 2013); US Telecom (7 Mar. 2013); Financial Industry Members (7 Mar. 2013); LAT (7 Mar. 2013)*

A generic TLD is one that represents an industry category in which the applicant competes. ICANN should require any such closed generic TLDs to be opened to competitors and other interested parties. Certain restrictions that serve the interests of consumers and that do not hinder competition may be appropriate (e.g., .bank for verified financial institutions) and would be consistent with similar restrictions that already exist (e.g., .gov for governments and related entities).

*Microsoft (7 Mar. 2013) ; F. Bennett (5 Mar. 2013)*

Delegation and operation of closed registries for generic industry terms by a single industry participant would be contrary to well-established legal principles (see Appendix A of Microsoft comments, Foreign Statutes Pertaining to Generics) and would present an anti-competitive risk. ICANN policy must prioritize the best interests of consumers worldwide. ICANN should not be distracted by arguments that the Applicant Guidebook did not speak to “closed generics” in particular. Nor should ICANN accept the specious claim that certain applicants may have to revise business models, when none of those business models have even been launched, or that ICANN would become a “regulator” by abiding by its own principles and contractual commitments. *Microsoft (7 Mar. 2013); F. Bennett (5 Mar. 2013); CTIA (8 Mar. 2013)*

Other than for .brand gTLD applications, enforcement of the Code of Conduct is necessary to protect the public interest and exemptions to it should not be granted. “Closed generic” TLDs are inherently anti-competitive unless backed up by trademark rights and are also at complete odds with the very trademark law and principles that ICANN has sought to protect through such new RPMs as the Trademark Clearinghouse and the Uniform Rapid Suspension (URS). Closed generic TLDs are at odds with the Affirmation of Commitments and relevant GNSO Council advice. They are not a new issue, and addressing them sets no precedent for other potential amendments to the Applicant Guidebook. The Code of Conduct’s default position is an open registry, and exemptions should only be granted narrowly to protect the public interest. *LAT (7 Mar. 2013)*

Closed generic TLDs circumvent the Registry Operator Code of Conduct and New gTLD Registry Agreement. Applicants would register names in their own right and would not provide open access to all registrars. Applicants are attempting to circumvent the Code of Conduct and Agreement through exemptions that were not intended for them. *AXA Group (6 Mar. 2013); Michelin (6 Mar. 2013); Accor (7 Mar. 2013); Yves Rocher (7 Mar. 2013); Rakuten (7 Mar. 2013); JANE (7 Mar. 2013); V. Asher (7 Mar. 2013)*

ICANN should adhere to its published rules and principles of competition and consumer protection. *CTIA (8 Mar. 2013); LAT (7 Mar. 2013)*

Closed gTLDs are anti-competitive. They would limit opportunities for numerous businesses to compete and have marketing power and the same prominence on the Internet as large corporations (e.g., gaining unfair advantage in direct navigation and online searching). *J. Fiero (18 Feb. 2013); V. Patel (27 Feb. 2013); Channel Cloud UK/Ireland (1 Mar. 2013); SDLC (4 Mar. 2013); FEP (4 Mar. 2013); Zumex (5 Mar. 2013); AXA Group (6 Mar. 2013); ThoughtWorks (7 Mar. 2013); Yahoo! (7 Mar. 2013); Accor (7 Mar. 2013); Yves Rocher (7 Mar. 2013); V. Asher (7 Mar. 2013); Allianz (7 Mar. 2013); Financial Industry Members (7 Mar. 2013); T. Gilles et al. (8 Mar. 2013)*

ICANN's delegation of closed generic TLDs for exclusive ownership and control by a single industry player would be contrary to the existing accepted legal norms for intellectual property rights and may have an anti-competitive effect that is contrary to ICANN's stated goals and policies. ICANN should subject such applications to greater scrutiny and policy evaluation before proceeding to delegation (e.g. obtaining more details on the nature of the intended use and a specific evaluation as to whether or not the proposed letter string is the common generic term for the intended use of the gTLD. The applications of concern where there is a need for greater scrutiny are those applications which involve exclusive ownership and control of a generic industry term by a single member of that industry (e.g., ;search, .book, .app, .game, .jewelry and others). AIPLA recommends that applications for closed generic TLDs be denied if they involve exclusive ownership, control and use as a closed registry of a generic TLD that matches a generic industry term by a single member of that industry. *AIPLA (7 Mar. 2013)*

Delegation of a generic term matching an economic sector to one single player (e.g., .TIRES) could lead to establishing a monopoly by excluding the direct and indirect competitors. *Michelin (6 Mar. 2013); T. Ashcroft (6 Mar. 2013); Accor (7 Mar. 2013); Yves Rocher (7 Mar. 2013)*

All new gTLD registry operators should be required to follow an open registration policy at the second level. Closed registration policies should only be allowed as an exception under certain circumstances. *Internet NZ (7 Mar. 2013)*

- Instead of defining "generic" criteria, ICANN should adopt the policy approach of clearly defining under what circumstances an exception to an open policy will be permitted. *Internet NZ (7 Mar. 2013)*
- The sole exception should be for "fanciful" trademarks, which consist of "coined" words that have been invented or selected for the sole purpose of functioning as a trademark. Such marks comprise words that are either totally unknown or are completely out of common usage at the time. The onus of proving ownership of a fanciful trademark should be on the new gTLD applicant if the applicant intends to exercise a closed registration policy. *Internet NZ (7 Mar. 2013)*
- People will not assume that they have the right to register under a fanciful mark TLD (e.g., .kodak, .xerox) as they would with a generic word TLD (e.g., .book, .music). *Internet NZ (7 Mar. 2013)*

Closed gTLD policies and models must be re-evaluated. Generic words like "world," "earth" etc. belong

to the people of the world and should be open. Global security issues as well as the side effects of gTLD commercialization on the open Internet must be factored into the analysis. *Rajuks (6 Feb. 2013)*

Domains and their extensions which are the gateway to information, products and services should not be closed and exclusive to any one entity. *J. Thomas (6 Feb. 2013)*

Control needs to stay within ICANN for generic terms. Closed gTLDs are counter to the intent of the new gTLD program which is to create competition and choice, not to give large corporations like Amazon and Google control over large segments of the Internet. Once such giants are given that control it will not be legal to take it away from them. *T. Casey (4 Mar. 2013); Dot Food (5 Mar. 2013); Consumer Watchdog (7 Mar. 2013)*

#### Threat to Open Internet

Closed gTLDs should not be allowed; they are a threat to the openness and freedom of the Internet. *Retail Council of Canada (6 Feb. 2013); J. Fiero (18 Feb. 2013); J. Cassells (26 Feb. 2013); P. Labelle (27 Feb. 2013); Lanvac Surveillance (27 Feb. 2013); Surveillance Lanvac Monitoring (27 Feb. 2013); Lanvac (27 Feb. 2013); Dan (27 Feb. 2013); Houle Electric (27 Feb. 2013); Precision Protection Systems (27 Feb. 2013); Keystone Security Systems (27 Feb. 2013); Safe Tech (28 Feb. 2013); G. Girardello (28 Feb. 2013); Cairn Control Systems (28 Feb. 2013); Safe Home Security (28 Feb. 2013); Affordable Lock Services (28 Feb. 2013); Infynia.com (28 Feb. 2013); Secur-Icare (28 Feb. 2013); Wilsons Security (28 Feb. 2013); B. Pianka (1 Mar. 2013); Northern911 (3 Mar. 2013); A. Watson (3 Mar. 2013); S. Reiss (3 Mar. 2013); B. Aamodt (4 Mar. 2013); Canadian Security Association (4 Mar. 2013); T. Casey (4 Mar. 2013); M. Cairns (5 Mar. 2013); SuperMonopolies dot com (5 Mar. 2013); Zumex (5 Mar. 2013); I. Moyse (5 Mar. 2013); Dot Food (5 Mar. 2013); Indigo Books & Music (5 Mar. 2013); IIA (5 Mar. 2013); Kobo (5 Mar. 2013); P. Driscoll (6 Mar. 2013); M. Reynolds (6 Mar. 2013); S. Cox (6 Mar. 2013); AXA Group (6 Mar. 2013); T. Ashcroft (6 Mar. 2013); ThoughtWorks (7 Mar. 2013); M. Baudier (7 Mar. 2013); Rakuten (7 Mar. 2013); JANE (7 Mar. 2013); V. Asher (7 Mar. 2013); OFE (7 Mar. 2013); K.J. Mobberley (7 Mar. 2013); Blacknight Solutions (7 Mar. 2013); Consumer Watchdog (7 Mar. 2013); R. Lancefield (7 Mar. 2013); Allianz (7 Mar. 2013); Financial Industry Members (7 Mar. 2013); Authors Guild (8 Mar. 2013); T. Gilles et al. (8 Mar. 2013)*

Consistent with the predisposition of the creators of the Internet and the World Wide Web, openness, not closure, should guide the policies directing this unprecedented addition of a large number of new gTLDs to the global root because openness has a proven track record of fostering online environments that support competition, diversity and innovation. *Internet NZ (7 Mar. 2013)*

#### Economic and Cultural Harm

.MUSIC strongly opposes “closed generic” TLDs for strings that are semantically and culturally significant, such as .MUSIC, .SONG, .TUNES. Closed gTLD applications should be accepted only in the case of “Dot Brands”--i.e., the applicant has internationally recognized trademarks for the string applied for. We are troubled by the applications of dominant companies with market power such as Amazon and Google who have applied for a significant portfolio of “closed” gTLDs to expand their

Internet monopolies and thwart competition. ICANN should look at the entire gTLD program, applications and applicants within the context of each TLD's subject matter, including any unintended but expected economic and cultural repercussions that specific "closed" applications will inevitably have on competition and consumer choice. ICANN should serve the global public interest and reject those anti-competitive applications that clearly have the intention to create detrimental economic and cultural harm to significant portions of the Internet community, such as the clearly delineated music community. *.MUSIC (7 Mar. 2013)*

Use of generic words as TLDs should be rejected. Given the potential number of generic words in all of earth's languages, the clutter and international management would be significant. gTLDs are contradictory to the well-established hierarchical structure of URLs. gTLDs would give rise to copyright, competition and trademark legal action as corporations grabbed market identifiers which were not their exclusive property. Descriptive granularity of a URL is already catered for by the use of lower level sub-domains. *S. Greig (5 Mar. 2013)*

ICANN should reject closed generic TLD applications. These words are the common heritage of all people. Fairness of the domain name system and its equitable disbursement is a key part of the world's economic trajectory. Anti-competitive ownership of generic TLDs by the world's largest corporations could lead to the rise of global super monopolies. It is fundamentally important that registry and registrar functions should be clearly separated. ICANN should move decisively to correct this oversight. Also, ICANN should not permit "open" generic word applications where more than one domain is being claimed by the registry (aside from the applicant's own brand name). This leads to the risk of de facto or virtual closed registries. *SuperMonopolies dot com (5 Mar. 2013)*

"Closed generics" introduce distortions and gaming of the application process (e.g., Google's decision that its Charleston Road subsidiary would not purchase tickets for its generic word TLDs applications, thereby delaying competitors' applications). Closed generic TLDs are also crass commercial exploitation of a program meant to benefit the global public of Internet users. ICANN has no mandate to auction off the most significant words in all major languages for the exclusive use of private parties as if they were selling naming rights to a municipal sports stadium. If ICANN fails to find closed generics incompatible with protection of the public interest in this first round of the program, it can expect to be deluged with such applications in the second rounds as global corporations seek to lock up key generic words before their competitors do. This will pervert a program that was meant to expand and open the DNS into one that permanently closes off large and significant sections, which is incompatible with benefitting Internet users as well as with ICANN's long term interests. *LAT (7 Mar. 2013)*

For non-Latin character sets in languages such as Chinese and Japanese, closed generics will place entire cultural identities at risk. There will be loss of opportunity for people and businesses in that native language to express, pursue and flourish in TLD namespaces designed for them. This should not be allowed. *T. Gilles et al. (8 Mar. 2013)*

Misleading to Consumers

If closed, generic TLDs are approved, consumers may mistakenly believe that they are using a gTLD that allows for competition, when in reality the gTLD is closed and the apparently competitive products are being offered by a single entity. *McCarthy Institute (1 Mar. 2013); US Telecom (7 Mar 2013); LAT (7 Mar. 2013)*

Generic closed gTLDs can be expected to function as would a deceptive trademark, misleading consumers and other members of the Internet public regarding what they expect to find when pointing to a domain name ending in a generic term. Proprietary claims to marks that would be expected to deceive or mislead consumers are universally disallowed. *S. Reiss (3 Mar. 2013)*

- That generic terms are regularly awarded in closed fashion at the second level is not good cause for allowing the same to occur at the top level. The top level clearly holds ultimate prominence in the minds of Internet consumers. It is unfair that an ICANN policy should result in a burden placed on all Internet users to learn that when a word appears in the top level of a domain name, it does not mean what it says. *S. Reiss (3 Mar. 2013)*
- If generic terms cannot be delegated to the top level in a manner that provides to each interested individual, business, organization and government the ability to be represented therein under conditions that are rational and equitable, then perhaps it would be preferable not to deploy the particular gTLD in the first place. *S. Reiss (3 Mar. 2013)*

#### Improper Extension of Trademark Rights

Where a gTLD corresponds to a trademark, the rights holder may have exclusive rights to use the descriptive gTLD for the goods and services for which it has trademark protection. However, a descriptive gTLD holder should not be able to extend their rights beyond the scope of their trademark protection in order to create a monopoly excluding interested users from benefitting from the gTLD. *IKEA (4 Mar. 2013); Dot Food (5 Mar. 2013); Indigo Books & Music (5 Mar. 2013); Kobo (5 Mar. 2013); A. Babenhauserheide (6 Mar. 2013); Michelin (6 Mar. 2013); TLT LLP (7 Mar. 2013);*

Allowing applicants to register gTLDs comprised of terms that the public commonly uses to identify a class of products or services as a closed domain would be the equivalent of granting trademark protection when there should be none. Allowing such a term's exclusive use by any one entity, whether as a trademark or as a gTLD, would infringe upon an important collective and society-wide ownership. A closed gTLD would grant a single business the exclusive use of a generic word and render that exclusivity enforceable on the Internet while unenforceable anywhere else. Similarly, allowing a closed gTLD string that is comprised of a descriptive rather than a generic term gives a single company powerful exclusivity in using that descriptive term, which it would not have under trademark law. The company could conceivably leverage its use of the gTLD over time to argue that the string has acquired secondary meaning warranting trademark protection, further harming competitors and consumers. The gTLD process should not lend itself to simply taking more popular descriptive terms out of public use. *Financial Industry Members (7 Mar. 2013)*

The new gTLD program is supposed to respect trademark rights, not become a means by which they are surreptitiously acquired (e.g., a Google-only .TUBE could become a source identifier and thereby

provide a back-door route for Google to extend the trademark rights it now has on YOUTUBE to the word TUBE in which it possesses no trademark rights). *LAT (7 Mar. 2013)*

### .BRANDS

Since 2008 and up to the actual reveal of the applications in June 2012, the concept of a “closed” gTLD registry was only considered in the .brand context. Unlike a generic term, a brand enjoys exclusive rights outside the domain name system. Accordingly, a .brand merely extends a recognized legal exclusive right. This is very different from creating an exclusive TLD for one entity in a generic term. *Yahoo! (7 Mar. 2013); Microsoft (7 Mar. 2013); F. Bennett (5 Mar. 2013); LAT (7 Mar. 2013); CTIA (8 Mar. 2013)*

Section 6 of ICANN’s Code of Conduct was intended to apply to companies seeking brand-related TLDs and not industry-wide generic categories. As such, GE does not believe that closed generics should be allowed and that applicants for closed generics should be given the chance to change their business model to an open generic or obtain a full refund of their application fees. *GE (14 Mar. 2013)*

It seems counterproductive to have closed sections of TLDs unless it involves an existing corporate name or title. These TLDs should remain open and moderated to ensure that only companies applying to join one of them show some relevance in their business structure that qualifies them to be in that particular sector. *Deister Electronics (27 Feb. 2013)*

### **SUPPORT FOR CLOSED GENERIC TLDs**

Closed generic TLDs should be allowed. The full purpose of expanding the DNS--increasing its utility -- cannot be accomplished if we try and dictate the ways that TLDs can be used. To address the concerns about the claiming of dictionary terms, ICANN should turn to trademark law. Lack of trademark protection for TLDs has resulted in ICANN’s attempt to devise trademark protections for an industry that that does not have trademark protection, resulting in applicant confusion and in this public comment period. *GetNewTLDs (21 Feb. 2013 & 6 Mar. 2013)*

We oppose any attempt by ICANN to become the world’s arbiter of what constitutes a “generic word” and also opposes ICANN’s suggestion that it arrogate to itself the right to decide whether applicants for generic terms in the TLD space may operate in a “closed” or “open” manner. *NCSG Members (4 Mar. 2013); J. Lipton (6 Mar. 2013); M. Rodenbaugh (6 Mar. 2013)*

- The answer to whether there are objective criteria for determining whether a string is generic is “no.” ICANN should not be in the business of classifying words for regulatory purposes, creating a new form of centralized, global content regulation that would pose long-term threats to freedom of expression. *NCSG Members (4 Mar. 2013); J. Lipton (6 Mar. 2013) M. Rodenbaugh (6 Mar. 2013); M. Wong (7 Mar. 2013); R. Kuhl (7 Mar. 2013); IBL (7 Mar. 2013)*
- The answer to the second question is that ICANN should not be dictating business models. Choice of a business model should be left to registries and subject to the discipline of the market. Closed v. open gTLDs is just a business model. ICANN should not pre-empt business

models; the public benefits from having options. There is no evidence that allowing closed generic registries would hinder, rather than facilitate, online innovation. *NCSG Members (4 Mar. 2013); J. Lipton (6 Mar. 2013); M. Rodenbaugh (6 Mar. 2013) TPI (6 Mar. 2013); M. Wong (7 Mar. 2013)*

- Registration and restricted use of generic terms is already a common practice. Closed generics are no different in principle from Barnes and Noble registering books.com, C/NET news registering news.com or the Scripps companies registering food.com. Applicants for generic TLDs have proposed basically the same model using a top level name. There is no relevant difference between the second level and the top level of the DNS in this case. *NCSG Members (4 Mar. 2013); M. Rodenbaugh (6 Mar. 2013)*
- Focusing on the top level only, there is also no relevant difference between .MUSEUM and a .BOOKS domain name. Also, there is resemblance between closed generics and community applications such as .ART or .ARAB. Closed generics are no different from “brand” TLDs when the brand name corresponds to a generic word--(e.g., giving .apple to Apple Computer. If it is not a problem when brand owners do it, why does it become a problem when Amazon registers .book, Google applies for .cloud or Toyota applies for .auto? *NCSG Members (4 Mar. 2013); M. Rodenbaugh (6 Mar. 2013)*
- The example of Barnes & Noble’s books.com and Amazon.com shows that there is no automatic linkage between possession of a domain name and domination of the market signified by that domain. Viable competition for the market signified by the generic term can come from firms that possess domain names with no semantic relationship to the generic term for the industry. *NCSG Members (4 Mar. 2013); M. Rodenbaugh (6 Mar. 2013)*  
It is far outside of ICANN’s mission to mitigate competitive advantages that might come from the assignment of generic TLDs. ICANN should leave judgments about market power and anti-competitive behavior to legally recognized authorities operating under well-established antitrust laws. *NCSG Members (4 Mar. 2013); M. Rodenbaugh (6 Mar. 2013)*
- Closed generics represent an additional option in the marketplace, not a restriction of their choice. *NCSG Members (4 Mar. 2013); M. Rodenbaugh (6 Mar. 2013)*
- If ICANN regulates the right of domain name registrants to operate closed generics, ICANN would actually limit free expression by imposing collective obligations and top-down regulations on domain owners. *NCSG Members (4 Mar. 2013); M. Rodenbaugh (6 Mar. 2013)*

Restrictions already exist within the TLD space and result in well-understood communities (e.g., .mil, .gov, .edu and .cat) These restrictions foster innovation because the restrictions are largely intended to create a sense of identity and community. Many of the innovations we expect to arise from the new gTLD program will emerge from single registrant models. There are many creative models for TLDs that serve a more curatorial purpose, and we believe that these models will make the Internet better for both users and brand owners. We need to think more broadly beyond the idea of competition as being between multiple TLDs with the same business model to include new business models not yet tested by the market. By allowing registry operators flexibility in their business models, ICANN will maximize the opportunity for innovation to develop real competition and choice for users. The single registrant

model allows for innovation and user-friendly solutions (e.g., Google’s proposed .blog TLD outlines a new, user-friendly way of automatically linking new second level domains to blogs on the Blogger platform). *Google (7 Mar. 2013)*

Claims that consumers will be confused by closed generic TLDs are speculative. *M. Rodenbaugh (6 Mar. 2013); M. Wong (7 Mar. 2013); ICLE & Tech Freedom (7 Mar. 2013)*

The assertion that closed generic TLDs were not “foreseen” when the AGB framework was being drafted is highly questionable. No language was included in the AGB or accompanying materials which expressed any concerns with closed gTLDs. *M. Wong (7 Mar. 2013); IBL (7 Mar. 2013)*

ICANN should allow both open and closed generic TLDs. ICANN should not impose open registration policies on TLD operators for non-legacy TLDs, including any “generic” TLDs. ICANN should allow companies to continue to innovate and choose the appropriate business model for their particular TLD rather than mandating a “one size fits all” approach to TLDs. Currently, ICANN allows a number of sponsored TLDs with both open and closed elements. This has allowed TLD operators to “innovate to the right of the dot” and create specialized TLDs that serve a specific audience. Further, just as ICANN should not try to determine when it would be best for a given domain to use an open or closed model for subdomains, neither should it try to determine when a particular TLD should have open or closed registration policies for domains. *ITIF (6 Mar. 2013); M. Rodenbaugh (6 Mar. 2013); TPI (6 Mar. 2013); J. Kesan & C. Hayes (6 Mar. 2013); M. Wong (7 Mar. 2013); R. Kuhl (7 Mar. 2013); IBL (7 Mar. 2013); ICLE & Tech Freedom (7 Mar. 2013); Amazon (8 Mar. 2013)*

No specific requirements regarding closed generic applications should be implemented. This is not a new issue, but one that was known when the current new gTLD process was developed. The concepts of “generic” and “closed” are complicated, with many shades of gray. There are many points of view and it is virtually impossible to develop criteria that are fair and well thought through at this stage. *PCI (7 Mar. 2013)*

Those that want to prohibit certain “closed” gTLDs based on an assumed understanding of business models must recognize that this would require ICANN to make judgments on difficult and unsettled issues. If ICANN starts acting as the gate keeper of business models for the top level, why would it not also be subject to proscribing similar rules in the second level? ICANN should avoid making any changes based on assumptions about applicant business models and stay focused on its core mission--the security and stability of the Internet--and the timely launch of new gTLD strings. *Amazon (8 Mar. 2013)*

New gTLDs are valuable economic assets. ICANN policies should assure that these assets are allocated to their most highly valued uses. *TPI (6 Mar. 2013)*

- ICANN’s decision to use an auction when there are multiple applicants for the same gTLD will further that goal. The bidder who believes its business model will be the most profitable will win the auction and the right to operate the gTLD. When there is only a single applicant, that applicant presumably represents the highest-valued use of the gTLD. *TPI (6 Mar. 2013); J. Kesan*

& C. Hayes (6 Mar. 2013)

- The best use of a gTLD can change (e.g., from closed to open) if the initial business model is not successful or if economic conditions change. This change can be effected either by the current operator or by a transfer of the gTLD to a new operator, subject to ICANN's review. In this way, gTLDs can continue to move to their highest-uses over time. *TPI (6 Mar. 2013)*

While there does appear to be competitive value in having a short, easy to remember domain name, there does not appear to be much competitive advantage in having a domain name consisting of a "generic" word. Success of a particular company has had much less to do with whether the string of its domain name was a generic or non-generic word and much more to do with the associated business model and branding for the company operating that domain name (e.g., Amazon, Zappos, Netflix). There is no reason to expect that competition will be restricted if there are closed generic TLDs (e.g. ".APP" or ".SEARCH." A competitor can choose another TLD using a generic word (e.g., ".FIND"), a protected trademark, or some other string, or could potentially buy the TLD if its value was worth more to it than the existing TLD operator. Any potential anti-competitive actions by an operator of a closed TLD against competitors could be addressed through the existing legal system. *ITIF (6 Mar. 2013); TPI (6 Mar. 2013); IBL (7 Mar. 2013); ICLE & Tech Freedom (7 Mar. 2013)*

Based on previous expansion rounds it is not so that new gTLDs or specific strings have an inherent value from which applicants can somehow create competitive advantage. *Google (7 Mar. 2013)*

- Internet users tend to use the top-level domains that they are already comfortable with, particularly .com. To overcome users' propensity to use .com domains, a new gTLD operator will need to make significant investments to raise awareness of the TLD and make the case to users to change their behavior. If these TLDs are successful, it will not be due to the inherent value of a generic term, but rather because users are persuaded to make use of these domains. *Google (7 Mar. 2013)*
- It is impossible to consider whether new TLDs will provide applications with unfair advantage without also studying the concept of substitutes. This topic has not been adequately discussed in the debate on generic single-registrant business models. While terms may be unique (.movie), concepts around those terms are not (e.g., film, .cinema, .flick, .media, and movie.com). While some are concerned by allowing one entity to manage a generic term for that company's sole use, even within the current pool of applications many of the concepts contained within the strings overlap, allowing for user choice and business case diversity in the marketplace. *Google (7 Mar. 2013)*

Permitting closed generic TLDs would limit competition within a given gTLD but would foster competition between gTLDs. *J. Kesan & C. Hayes (6 Mar. 2013); ICLE & Tech Freedom (7 Mar. 2013)*

Closed generic TLDs promote rather than frustrate competition by making it possible for virtually any entity to apply for virtually any TLD. Subject to 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 TLD

can apply for the right to operate it and if necessary bid against other entities for that right. That is the most effective way to promote competition. *PCI (8 Mar. 2013)*

gTLDs present a possible--indeed likely--competitive constraint not only on existing TLDs, but on SLDs, as well, opening up an enormous range of competing domain name options for entities shut out of the most valuable SLDs within .com. The proper stance to take is to encourage innovation. This does not mean that there are no mechanisms for policing possibly anticompetitive behavior. The current agreement allows exceptions from the Code of Conduct regarding nondiscrimination. Using this authority, ICANN may allow applicants for new gTLDs to employ closed registration policies. *ICLE & Tech Freedom (7 Mar. 2013)*

Many potential conflicts over domain names have been resolved using the market and the same potential exists for TLDs. Part of the reason that the "closed" model has worked for domain names has worked is because owners are able to relatively easily buy and transfer domain names. The relative scarcity of TLDs and domain names has not yet reached the point requiring market intervention. If ICANN is concerned about efficient outcomes, it should work to minimize the transaction costs involved in the registry transfer process and registry accreditation process. *ITIF (6 Mar. 2013); IBL (7 Mar. 2013)*

The ICANN Board has a mandate specified in the ICANN By-laws to act in the public interest, so it has discretionary power to make decisions based on such requirements. If specific winning applications raise concerns, they can be denied root delegation. What is inappropriate is applicants within a contention set with the "closed generics" trying to block those applications when there is no AGB rule to give priority to standard TLDs with no eligibility requirements. *R. Kuhl (7 Mar. 2013)*

New forms of innovation and competition require that registry operators be allowed to experiment with a variety of business models, from the current pure open model to the single registrant "brand TLD" and everything between them. *Google (7 Mar. 2013)*

ICANN should allow closed generic string application to proceed. An unfettered process is paramount in opening up the domain name space and increasing innovation in a market that has been, effectively, stagnant. We are just beginning to explore this source of innovation on the web and are excited to see how these new TLDs may fare. We hope that offering new and different TLD choices will be interesting and meaningful to the public and generate excitement about the new TLD program. *Google (7 Mar. 2013); ICLE & Tech Freedom (7 Mar. 2013)*

ICANN should permit closed generic applications to proceed toward delegation. With respect to Allstate's TLD applications, they will not necessarily be classified as closed generic TLDs that will prevent all of Allstate's competitors and other third parties from having any access to the .autoinsurance and .carinsurance namespaces. The Allstate TLDs will be safe, restricted namespaces that will eventually be open to Allstate's over 9,000 independent contractor agents after various necessary phases of startup. Allstate agents are not Allstate employees and a significant number of

them sell insurance products offered by companies not affiliated with Allstate. *Allstate (8 Mar. 2013)*

A prohibition on closed generic TLDs will increase costs to brands and consumers by forcing everyone to pay fees to even more open generic TLD registries for defensive registrations in an effort to stave off cybersquatters. *Allstate (8 Mar. 2013)*

#### Case by Case Approach to Closed Generic TLDs

ICANN should not support completely uncontrolled use of generic words as TLDs. However, some instances of generic word TLDs could be both reasonable and have very strong benefits of just the sort ICANN seeks. Such uses should not be excluded as long as it can be established that they serve the public interest. Allowing this nuanced approach would likely involve a case by case review of how a TLD will be used and how its sub-domains will be allocated. Moreover, it would require a contractual commitment to not change that model once the TLD is delegated. *ALAC (7 Mar. 2013)*

Only specific names should be allowed to be a closed generic registry in the interest of maintaining competition and fairness in industry. In particular, names such as .cloud, .security, .ondemand and many others should be exempt from this policy; this is especially true if these specific closed registries are owned by a single company. *S. McLeod (28 Feb. 2013)*

The USPS urges ICANN to carefully examine all proposed closed registries for strings that may be loosely characterized as “closed generics” on a case by case basis, taking into account that some terms viewed in the abstract as “generic” may actually be registered trademarks or may have acquired secondary meaning as brands in accordance with well-established and generally accepted principles of trademark law and should not be classified as “closed generics.” Because each so-called “closed generic” application may involve differing considerations as to the Public Interest in granting exemptions to the ICANN Registry Agreement, each such application should be evaluated independently (e.g. at this stage of the program, such analysis could most appropriately be done in the context of String Contention procedures or individual Public Interest evaluation when “closed generic” applications are not in String Contention; in both scenarios, public comment should be sought regarding each applied-for “closed generic” string). *USPS (7 Mar. 2013)*

#### Allow Certain Generic TLDs as Restricted, Community and/or Closed

Unit4 Business Software supports the reasonable compromise that would allow some generic terms to be registered as:

- 1) Restricted TLDs (e.g. .bank restricted to verified banking institutions);
- 2) Community TLDs (e.g. .ski for ski enthusiasts and related companies); and
- 3) Closed Branded TLDs where a company’s well-known trademark also happens to be a dictionary term (e.g. apple for Apple Computer)

*Unit4 Business Software (28 Feb. 2013)*

Closed gTLDs should only be granted for brand names or terms in which the applicant possesses established intellectual property rights and/or trademarks. Otherwise nation-states’ established legal

procedures for obtaining intellectual property rights and trademark protections could be circumvented or undermined. *FEP (4 Mar. 2013); Latvian Booksellers & Publishers (5 Mar. 2013); Borsenverein des Deutschen Buchhandels e.V. (5 Mar. 2013); Slovenian Booksellers Society (6 Mar. 2013)*

Closed generic domain names should only be allowed if the company seeking to close the domain name can prove that no other company or person should have access to it. The company must prove its case; it is not up to ICANN or third parties to disprove it. However, it must not be possible to register a closed generic name such as .bank or .search because multiple companies operate in those industries. *B. Lampen-Smith (5 Mar. 2013)*

A closed namespace for brand names makes sense but not generic terms. They should be open for everyone. *T. Casey (4 Mar. 2013)*

#### Allow Restricted Community-Based Generic TLDs

PCIAA cautions ICANN against promulgating rules that prevent community-based generic TLDs that are restricted to use only by qualified businesses within that generic term's industry. Such a TLD can enhance online safety and security for consumers as well as the TLD's credibility to represent the industry involved (e.g., control of hypothetical WIDGET by the ABC Widget Company for its sole use would create an unfair competitive advantage, but community-based control of .WIDGET by a widget manufacturers association, and open to any qualified widget industry company, would be appropriate). *PCIAA (25 Feb. 2013)*

### **PROCESS**

#### New Policies Not Necessary

Avoidance of the dangers of closed generic TLDs does not require ICANN to create new policies or processes and can be achieved through proper implementation and interpretation of existing rules and processes, including application of the Code of Conduct and judicious use of exceptions thereto. If the ICANN Board believes that this issue is best dealt with through creation of new policies, then Microsoft would support initiation of a PDP to address closed .generics and is willing to accept whatever resultant delay of the new gTLD rollout may be required to fully resolve this issue. *Microsoft (7 Mar. 2013); F. Bennett (5 Mar. 2013)*

#### Modification or Withdrawal of Applications

ICANN should clarify that application of Section 6 of the ROCC is necessary to protect the public interest in all cases of closed gTLDs for such generic industry terms (that are not brands). This would lend certainty to the process and result in refusal of applications of concern. ICANN could permit applicants to amend applications to make them open or withdraw applications not meeting the requirements of Section 6. *Indigo Books & Music (5 Mar. 2013); Kobo (5 Mar. 2013)*

ICANN should require applicants for closed gTLDs to either open the TLD or withdraw for a full refund. *P. Labelle (27 Feb. 2013); Lanvac Surveillance (27 Feb. 2013); Surveillance Lanvac Monitoring (27 Feb.*

2013); Lanvac (27 Feb. 2013); Dan (27 Feb. 2013); Houle Electric (27 Feb. 2013); Precision Protection Systems (27 Feb. 2013); Keystone Security Systems (27 Feb. 2013); Safe Tech (28 Feb. 2013); G. Girardello (28 Feb. 2013); Cairn Control Systems (28 Feb. 2013); Safe Home Security (28 Feb. 2013); Affordable Lock Services (28 Feb. 2013); Secur-Icare (28 Feb. 2013); Wilsons Security (28 Feb. 2013); Northern911 (3 Mar. 2013); IKEA (4 Mar. 2013); B. Aamodt (4 Mar. 2013); Canadian Security Association (4 Mar. 2013); AXA Group (6 Mar. 2013); ThoughtWorks (7 Mar. 2013); Rakuten (7 Mar. 2013); JANE (7 Mar. 2013); Microsoft (7 Mar. 2013); F. Bennett (5 Mar. 2013)

ICANN should provide options that will allow New gTLD applicants seeking closed generic TLDs to bring their applications into compliance with the non-discrimination rules of the New gTLD program. CTIA supports the remedy proposed by Google that would permit any applicant for a closed generic TLD to modify their application and agree to operate it as an open TLD. In the alternative, ICANN should offer the option for the withdrawal of the application. CTIA also requests that ICANN not only enforce “open access to any registrar who meets ICANN’s accreditation guidelines,” but also require the registry operator to accept registrations from all registrants that meet clear and non-discriminatory criteria corresponding to the TLD string and the generic goods, services, and marketplace the TLD represents. CTIA (8 Mar. 2013)

ICANN should make clear that any registry operator of a generic word TLD cannot, if denied a requested waiver of the Code of Conduct and compelled to make domains available through third party registrars, limit the usage of the gTLD to “premium members,” “select content distributors who meet their eligibility criteria,” or other vague qualified registrant criteria that will be determined and revealed only after the registry operator contract is signed. Such restricted uses would also be off-limits to a closed generic, as the exemption provision of the Code of Conduct permit single registrant operation only where “Registry Operator does 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.” Such restricted usage would subordinate the activities of registrants to “terms of service” imposed by the registry operator that are designed to further its own business model and limit new completion against it and is therefore at odds with the public interest (e.g., Google becoming a “mini-ICANN” establishing second class registrant rights). LAT (7 Mar. 2013)

#### Do Not Change the Applicant Guidebook Rules

ICANN should not impose new rules respecting “open” versus “closed” new gTLD registries. Changing the rules at this late stage would be unfair and cause monetary harm to many new gTLD applicants that created business plans based on the rules ICANN set in place. Should ICANN change its stance, it could open up huge legal issues for ICANN (e.g. companies like Amazon will have a golden opportunity to sue ICANN for very large amounts of future lost profit). K. Dabney (6 Feb. 2013); J. Lipton (6 Mar. 2013); M. Rodenbaugh (6 Mar. 2013); M. Wong (7 Mar. 2013); IBL (7 Mar. 2013).

Applicants in good faith relied on and based expenditure of significant time and resources on the rules set by ICANN that were debated and discussed for more than four years, and they should not be retroactively changed. Changing direction at this time will result in delays and a loss of confidence in

the process itself. In the end, the only differentiation the ICANN community chose to recognize in the Applicant Guidebook was the need to recognize specific “community” applications. All other business models for operating a domain fall under the scope of a standard application which according to the Applicant Guidebook can be used for “any purpose consistent with the requirements of the application and evaluation criteria” and “may or may not employ eligibility or use restrictions.” The choice of business model is left to the applicants. *Amazon (8 Mar. 2013); PCI (8 Mar. 2013); Allstate (8 Mar. 2013)*

Subjecting “closed generic” applications to new criteria raises sensitive administrative and financial issues. If applicants were permitted to amend their applications, 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 paid consultants significant fees for assistance in preparing closed generic applications in reliance on the current Guidebook? *PCI (8 Mar. 2013)*

The task of resolving concerns about unfair and inappropriate conduct in the DNS falls to the established legal systems which have the requisite bodies to deal with these issues (e.g., antitrust, trademark infringement, consumer fraud, etc.) and are more appropriate than a body whose purpose is to administer the technical aspects of the system. *J. Lipton (6 Mar. 2013); M. Rodenbaugh (6 Mar. 2013); M. Wong (7 Mar. 2013); R. Kuhl (7 Mar. 2013); ICLE & Tech Freedom (7 Mar. 2013); Amazon (8 Mar. 2013)*

ICANN is not obliged to grant a generic TLD to any one particular applicant. Procedures exist to ascertain priority, including ultimately an auction between applicants contesting the right to the same character string. Once the established procedures have been carried out, ICANN’s role ceases, unless the applicant runs the registry inconsistently with the business plan submitted along with the application. This should be end of ICANN’s role in the matter as stated in the current AGB. *J. Lipton (6 Mar. 2013)*

One possible approach is to see if a way can be found utilizing community engagement, either via the PIC or the final Registry Agreement, to permit initial mutual resolution of a situation that emerges where a registry operator is alleged to have operated its registry in a manner that adversely affects consumers or competitors. Defining what is in the “public interest” is difficult. ICANN should be wary of developing rules and standards which do not currently exist in national or international laws, legal doctrines and norms, which could place it in the uncomfortable position of being a regulator in a legally substantive area outside its mandate or competency. *M. Wong (7 Mar. 2013)*

ICANN should not attempt to classify certain strings as “generic.” Instead, it should retain its policy of allowing public comment on all proposed TLDs and address any disputes that arise through this process. Just as ICANN established a process to resolve disputes arising from the use of certain strings for domain names in its UDRP, it should use a similar dispute resolution process for any conflicts over TLDs. Indeed, ICANN has already established some rules and processes to resolve a variety of dispute (e.g., string confusion, etc.) *ITIF (6 Mar. 2013)*

In addition to the difficulty of arriving at a reasonable definition of the term “generic,” there is a broad spectrum of possible policies around the concept of restricted or “closed” TLDs. It is easy to focus only on the two extremes --either TLDs that allow any registrant to register any domain for any purpose *or* single-registrant TLDs where the only purpose is to host content provided by a single organization and consider these as “open” or “closed.” In reality, there are a variety of registration policies between these two extremes. *Google (7 Mar. 2013)*

ICANN should allow otherwise sufficient applicants to adopt closed registration policies and refer competition concerns to the relevant competition authorities. This approach allows experimentation and innovation to occur and at the same time preserves the ability of regulators with the appropriate expertise to stop behavior that damages consumer welfare if it arises. This avoids putting ICANN in the position of performing a competitive analysis of each application and will speed up application review. ICANN does not have the expertise or resources to make informed competition policy. A per se rule against closed gTLDs and a presumption against closed gTLDs would prevent this gradual and tested development. *ICLE & Tech Freedom (7 Mar. 2013)*

ICANN must maintain the integrity of the new gTLD program. At best, retroactively deciding to allow a more restrictive interpretation of the guidebook and at worst going back and “adding in” policy risks appearing capricious and eroding trust in the process. Further, in situations where competition and market forces are at stake, it is paramount that the procedures and policies around such a process remain consistent. ICANN’s role here is to remain neutral and to provide a consistent, transparent process. *Google (7 Mar. 2013)*

- Even small changes in the process create winners and losers and allow those participating to game the system and/or change outcomes. Changing the process mid-stream will have real and practical consequences for businesses and end users alike. *Google (7 Mar. 2013)*
- ICANN’s role is not to pick winners and losers, but to establish processes that mitigate concerns as they arise through the implementation of the program. In the case of closed generic TLDs there are multiple checks built into the system that provide the correct balance between an unfettered application process and the protection of end users. The four objection options in the AGB, coupled with the GAC Advice process and the national competition authorities serve as a final check on the process. *Google (7 Mar. 2013)*

Amazon does not understand how the allocation or use of a gTLD or an SLD could have an impact on competition in a relevant market segment. There is no evidence that past “closed” domains have led to any market power. Any impact would occur through the ultimate actual use, and not allocation and use of the name per se (or else all registry/registrar activities, including in “open” spaces, are anti-competitive by nature). ICANN must wait until each gTLD is in use and then relevant competition authorities can measure actual behavior against relevant competition laws. ICANN should leave competition issues to the appropriate authorities enforcing the laws of their respective jurisdictions. Relevant national laws apply to all participants in the DNS system throughout the lifecycle. There is no justification for retroactively changing the rules based on conjecture. *Amazon (8 Mar. 2013)*

Mindful of the fact that the normal rules of law in relation to anti-competitive behaviors will apply to all registries, including open and closed generics, MARQUES position is that the status quo as set out in the Applicant Guidebook should apply. Both open and closed generics should continue to be allowed in this first application round but both should be subject to significant scrutiny after launch by ICANN to ensure that the interests of rights owners and consumers are protected. *MARQUES (8 Mar. 2013)*

#### Generic Word TLD Definition

Whether or not a TLD is generic depends upon the products or services in the mission or purpose for that particular registry (e.g. .apple with a mission/purpose involving apple trees and apple groves would be a generic TLD, while .apple with a mission/purpose involving computers would not be a generic TLD). *B. Longbottom (7 Mar. 2013)*

ICANN should adopt a procedure to review readily accessible public information, e.g., through common dictionary and Internet searches, to determine whether an applied-for gTLD is the term used as a common or class name for the goods or services offered by the applicant. If a term is identifiable as a common or class name of the goods or services (including, without limitation, if it is defined by statute or other legal authority), then ICANN should reject the application. *Financial Industry Members (7 Mar. 2013)*

IPC recommends that in determining whether a TLD is considered “generic” there must be an initial analysis of whether the applied-for TLD is a word that is a genus of a quality, feature, function, or characteristic of the stated mission and purpose of the applied-for TLD in its answer to question 18(a). This analysis is not a bright line one, and there are several nuances to the test set forth. E.g., a word that has been used on a wide range of different types of products or services that are not within the same species may be less likely to be considered generic. A proper analysis also requires an in-depth factual investigation of the relevant public’s understanding of the alleged generic term, and the weight given to the analysis will depend on the intended purpose of the TLD. *IPC (15 Mar. 2013)*

#### Definition of Closed Generics

It is difficult to see how generic terms can be closed. Making generic terms closed will lead to increased competition litigation and to a clash with trademark law, as generic terms are by definition not capable of distinguishing the goods or services of one company from another. *L. Cohen (12 Mar. 2013)*

ICANN must be careful in how it defines closed generics. One suggestion was to limit the closed registry exception in the Code of Conduct only to TLDs that are an exact match to trademarks that were issued registrations of national effect in numerous countries at least five years ago, with the additional requirement that the marks be eligible for inclusion in the Trademark Clearinghouse. Such strict limitations do not serve the public interest or Internet stakeholders. The intent of the limitations should be to eliminate closed generics, not to eliminate every brand-related TLD application that does not meet exceedingly high and exact standards. E.g., GE applied for GECOMPANY and the Chinese translation of GECOMPANY. There is no question that such applications are entirely related to the GE

brand and do not seek to restrict competition regarding any industry or generic term. Such a strict application of the rules would be inappropriate in this case, as these domains are not truly “closed generics.” *GE (14 Mar. 2013)*

In creating any special rules regarding “closed” registries, ICANN must be careful not to treat all registries that have restrictive registration requirements as closed. *COA (7 Mar. 2013)*

- If properly designed and implemented, restrictions on who may register in a new gTLD and for what purpose can be a powerful tool for reducing the risk of abusive registrations. ICANN should avoid according any blanket preference for open registries in standard (non-community) applications, especially those targeted to the creative sectors, to the extent the restrictions are aimed at promoting the public interest by reducing the risk of intellectual property infringement. *COA (7 Mar. 2013)*
- To address concerns about the risk of anticompetitive behavior from industry terms as closed gTLDs, ICANN should consider heightened scrutiny of such new registries dealing with issues of nondiscrimination, competition and where relevant protection of IP (e.g., enhanced reporting requirements, mid-term reviews, potential term limits. *COA (7 Mar. 2013)*

Any decision by ICANN on the issue of closed generics must be categorically without prejudice to determinations by national trademark offices and courts with respect to (i) the concept of a prohibition of generic terms as trademarks, and (ii) their evaluation of domain names (whether at the top, second or other level) as trademarks. *IPC (15 Mar. 2013)*

Two categories of gTLD applications do not present the concerns that gave rise to this request for public comment:

- (1) “closed” gTLDs that identically match the applicant’s trademark for the goods or services to be provided in connection with the proposed TLD--regardless of whether or not those TLDs are also ordinary dictionary terms (i.e., “.brand”); and
- (2) “closed” or “restricted” TLDs that consist of terms used by communities or associations and will be used by members of the community or association (whether the term is owned by an association or eligibility is limited to members of the category described by the term--e.g. banks in .bank or charities in .charity).

IPC strongly urges ICANN to recognize a specific “.brand” category of TLDs for which the registry would presumptively be able to set the policy requirements for second-level registrations. Such a category could form a replacement to the single-registrant-single-user exception from the Registry Code of Conduct, an exception that was designed in part for the .brand registry but was drafted more broadly in a way that allowed “closed generic” registries to claim an exemption from the Code of Conduct. In determining whether a TLD qualifies as a “.brand,” the criteria should exactly match the criteria for inclusion and Sunrise eligibility in ICANN’s Trademark Clearinghouse (e.g. proof of use, and either a national or regional trademark registration, a trademark validated through a court of law, or a trademark protected by statute or treaty). *IPC (15 Mar. 2013)*

An additional group of applications appear to involve terms controlled by communities or associations where protection is again consistent with the traditional legal framework. Similarly, a registry for a “generic” term that incorporates eligibility requirements relevant to the meaning of the term itself (e.g. pomegranate registry limited to pomegranate growers) is permissible and would not fall under the definition of “closed generics.” This might be particularly appropriate in regulated industries (e.g. a .bank registry limited to chartered banks or a .charity limited to bona fide charities in good standing), or in sectors where there are particular sensitivities to fraud, counterfeiting, intellectual property infringement, and other consumer-abusive behaviors. *IPC (15 Mar. 2013)*

Target offers no opinion on the propriety of so-called closed generic TLDs, but strongly urges ICANN to ensure that any action it takes does not affect brand owners who have applied, directly or through an affiliate, to operate gTLDs corresponding to their brand names. ICANN should exclude from the definition of closed generics any string that is a brand name of the applicant, or its affiliated entity, even if the string should happen to have other meanings that are unrelated to the brand. Whether or not it is wise or fair to prevent exclusive use of a product’s generic name as a gTLD string, it is not appropriate, and it would be unfair, to prevent exclusive use of brand names that happen to have other, non-brand meanings. *Target (7 Mar. 2013)*

Due to the complexities of trademark law, objective criteria for closed generics cannot be developed that will work appropriately in every instance. If ICANN believes that a formal test is required, then each applicant for a closed gTLD could be asked to produce trademark registrations, owned by the applicant itself or its affiliate, showing that the applied-for string is a brand name in which it has a legitimate, recognized interest. To ensure international relevance, ICANN could require that the registrations be from countries on, e.g., at least 3 continents. ICANN could also require that the trademark registrations must have been registered by a particular date prior to the launch of the gTLD expansion, such as 1 January 2010. An alternate process involving experienced practitioners would also need to be in place so that applicants who did not have the requisite registrations could prove, if possible, legitimate trademark rights by other means. *Target (7 Mar. 2013)*

#### Process for Analyzing Merits of Closed Generic gTLDs

In assessing whether to allow a closed generic TLD, it is essential to engage in identifying the market for the TLD and whether there is a likelihood that a monopoly or oligopoly would be created that could distort the market and prejudice public interest. The litmus test is the impact on global public interest and the considerations would be: Is there a visible threat to the global public interest? What is the nature of the threat/challenge? Is there a need to “seal off a market” to preserve competition? Are there generic terms where it is in the public interest to be closed? *S. Tamanikaiwaimaro (4 Mar. 2013)*

I agree with the ICANN staff recommendations about: not creating a new category of generic term applications with new provisions and using objection mechanisms regarding problematic applications; that GNSO guidance is the appropriate basis for establishing category rules, and that seeking policy guidance would cause delay and raise liability on the introduction of additional criteria to the process. Also, it is reasonable that members of the community relied on the Economic Framework report as a

rationale considered by the ICANN Board for its subsequent approval of new gTLD expansion. *R. Fassett (6 Mar. 2013)*

#### Limited Closed Period

Any generic word covering an activity or product, e.g., .app, insurance, book, that has been registered by an enterprise should be stopped and released back out to the general public; however, realizing the commercial nature of these registrations and the fees paid, there could be a closed period of 180 days during which the registering organization can use the name without any other commercial interest. After that time the name would become publicly available. *P. Pope (1 Mar. 2013)*

#### Objection Procedures

Two problems with ICANN's objection procedures for closed registry applications:

- (1) The cost of lodging an official objection to a closed registry application is prohibitively expensive (about 40,000 Euros). It would be nearly impossible for most objectors to afford ICANN's objection fee.
- (2) The parameters of the Independent Objector (IO) brief are so restricted as to deny what many would say are reasonable grounds for lodging an objection.

The unnecessarily restrictive nature of official ICANN objection procedures means that ICANN may receive few or no official objections and few or no objections from the IO. However it is misleading for ICANN to state on its website on the application pages for the various strings that no objections have been filed. ICANN should be more precise and state that while it has received few or no official paid objections to the proposed strings, it has received a large number of objections in the form of comments. It would be misleading for ICANN to report to the Department of Commerce that it received no objections to the proposed "walled garden" domain names. *SuperMonopolies.com (7 Mar. 2013)*

Four weeks is too short a period of time for taking input from stakeholders on the subject of "closed generic" TLDs, which implicate trademark law, competition law and other legal considerations, as well as decisions of potential objectors to "closed generic" applications. INTA urges ICANN to allow all stakeholders to vet sufficiently the possible ramifications of "closed generics" gTLD applications prior to approving such TLDs for entry into the root zone; and to extend the objection deadline currently set for 13 March 2013, at least with respect to such "closed generic" TLD applications until the ICANN community has settled these important issues. *INTA (7 Mar. 2013)*

The new gTLD formal objection period should be extended for all strings with "closed generic" applications to a date that is several weeks after the reply period ends and ICANN issues its written decision on whether customized criteria should apply to closed gTLDs. The existing deadline of March 13 does not provide adequate time for either ICANN or objecting parties to consider this complex issue, and would result in an unnecessary and unfortunate waste of resources. *COA (7 Mar. 2013)*

#### Education and Awareness Campaign for New gTLD Program

ICANN should conduct a broader and more extensive information and education campaign prior to any gTLDs being awarded under the current process. ACCA is concerned that there is a general lack of awareness about the new gTLD program and the current process, and that businesses, organizations

and governments across the Asia Pacific region would all have stark objections if they understood the process now underway and the potential economic and developmental impacts. Issues include: the potential need to for companies to file many defensive registrations, which would be a retrograde step revisiting the chaos of the early days of the Web and holding companies hostage to profiteers in an expensive land grab; as well as the prospect many businesses face that their general sector could be “owned” by a single company able to dictate particular online access. That would immediately balkanize the Net into specific fiefdoms. *ACCA (7 Mar. 2013); OFE (7 Mar. 2013)*

#### Review Process

In light of the many concerns that closed generic TLDs raise, especially their impact on non-commercial and non-profit organizations and NGOs within the market space allocated to closed gTLDs, there should be a review process to establish whether the current ICANN guidelines were defined enough regarding the means for “closed generic” gTLD applications to be submitted, and a review process of all the “closed generic” TLD applications and their individual intent, purpose and usage, to determine whether they should either be open or withdrawn for a full refund. The economic impact assessment report on the “closed generic” new terms of use should be made available. *K. Macaulay (7 Mar. 2013)*

#### Impact of Closed Generic TLD Policy on IDNs

If any rules or standards are developed for closed generic TLDs, thought needs to be given to their applicability to IDNs and to the possibility that in the future there can be situations where the same combination of Latin-based letters may mean different things (possibly one generic and one not) in different languages. *M. Wong (7 Mar. 2013)*

### **SPECIFIC APPLICATIONS**

#### .APP, .BLOG, .CLOUD, .SEARCH

Google understands that there is particular sensitivity within the Internet community about certain broad terms that serve as industry descriptors. Neither the guidebook nor the law require special treatment of these terms, but the success of the gTLD program also relies on user and community support for new gTLDs, and the best user experience for these broad industry terms likely includes the opportunity for users to access a variety of service providers. *Google (7 Mar. 2013)*

After careful analysis, Google has identified these four of its current single registrant applications that Google will revise. These terms have been identified by governments (via Early Warning) and others within the community as being potentially valuable and useful to the industry as a whole. Google believes that for each of these terms Google can create a strong set of user experiences and expectations without restricting the string to use with Google products. Google intends to work with ICANN, the GAC and other members of the relevant communities to amend Google’s applications with new registration policies (and in some cases new registry services) to achieve these aims. Details of these plans will be forthcoming in the near future. *Google (7 Mar. 2013)*

#### .BEAUTY, SKIN, MAKEUP, HAIR or SALON

The applicant is looking for an exclusive right to these TLDs despite the fact that these terms are common words and that its direct competitors also use them in their business, most of them even adding these terms to their trademarks. *Yves Rocher (7 Mar. 2013)*

.BOOK, .AUTHOR, .READ

ICANN should not offer for sale a closed generic TLD for .book and other similar words in general usage. In the case of a closed generic TLD like .book, the exclusivity granted to the winning applicant would de facto strengthen the position of the biggest bidder to have sole use of the gTLD in the book industry and therefore be anticompetitive, discourage innovation and new entrants and be detrimental to the industry as a whole. *Booksellers Association of Switzerland (27 Feb. 2013); Booksellers Association of UK & Ireland (27 Feb. 2013); EIBF (1 Mar. 2013); Spanish Bookseller Federation (4 Mar. 2013); F. Ernster (4 Mar. 2013); S. Teixeira (4 Mar. 2013); FEP (4 Mar. 2013); Booksellers New Zealand (4 Mar. 2013); Libreria Camara (5 Mar. 2013); Booksellers Association of Andalucia (5 Mar. 2013); Libreria Iberoamericana Vervuert (5 Mar. 2013); Libreria Delta (5 Mar. 2013); Repiso Libros (5 Mar. 2013); Libreria-Papeleria La Parada (5 Mar. 2013); Quorum Libros (5 Mar. 2013); Latvian Booksellers & Publishers (5 Mar. 2013); Comic Stores (5 Mar. 2013); Libreria La Isla (5 Mar. 2013); Borsenverein des Deutschen Buchhandels e.V. (5 Mar. 2013); Libreria El Naranjo (5 Mar. 2013); Indigo Books & Music (5 Mar. 2013); Libreria Hijos de Santiago Rodriguez (5 Mar. 2013); Libreria Diogenes (5 Mar. 2013); Libreria de Deusto (5 Mar. 2013); Libreria Luque (5 Mar. 2013); Libreria Clarin (5 Mar. 2013); Libreria Camara (5 Mar. 2013); Libreria Llorens Llibres (5 Mar. 2013); Libreria Kiriku y la bruja (5 Mar. 2013); Libreria El Pinar (5 Mar. 2013); Kobo (5 Mar. 2013); Slovenian Booksellers Society (6 Mar. 2013); Libreria Casa Ruiz-Morote (6 Mar. 2013); Booksellers Association of Bizkaia (6 Mar. 2013); Booksellers Association of Spain (6 Mar. 2013); Swedish Booksellers Association (6 Mar. 2013); Libreria Taiga (6 Mar. 2013); Libreria El Libro Tecnico y Libreria Casa del Lector (6 Mar. 2013); Libreria La Luna Nueva Libros (6 Mar. 2013); Libreria Joker (6 Mar. 2013); Booksellers Association of Asturias (7 Mar. 2013); Asociacion de Libreros de la Provincia de Las Palmas (7 Mar. 2013); Catalan Bookseller Trade Union (7 Mar. 2013); Dutch Booksellers Federation (7 Mar. 2013); AAP (7 Mar. 2013); SNE (7 Mar. 2013); Authors Guild (8 Mar. 2013); Casa del Libro at Acala de Henares (8 Mar. 2013); Casa del Libro at Calle Arka (8 Mar. 2013); Casa del Libro de Barcelona en Rambla de Catalunya (8 Mar. 2013); Casa del Libro at Oviedo (8 Mar. 2013); Casa del Libro at Ponferrada (8 Mar. 2013); Casa del Libro at A Coruna (8 Mar. 2013); Casa del Libro at Centro Comercial Salera Carretera Nacional (8 Mar. 2013); Casa del Libro at Centro Comercial Grancasa (8 Mar. 2013); Casa del Libro at Acala (8 Mar. 2013); Casa del Libro de Isla Azul (8 Mar. 2013); Casa del Libro at Alicante (8 Mar. 2013); Casa del Libro at CC. Espacio Leon (8 Mar. 2013); Casa del Libro at Xanadu (8 Mar. 2013); Casa del Libro at Fuencarral (8 Mar. 2013); Casa del Libro at Valencia (8 Mar. 2013); Casa del Libro at San Miguel (8 Mar. 2013); Casa del Libro at Terrassa (8 Mar. 2013); Casa del Libro at c/Nueva 5 (8 Mar. 2013); Casa del Libro at Plaza de Italia (8 Mar. 2013); IPA (8 Mar. 2013); Casa del Libro at C/Maestro Victoria (9 Mar. 2013); Casa del Libro at Passeig de Gracia (9 Mar. 2013); Casa del Libro at Orense (9 Mar. 2013); Casa del Libro at C/Velazquez Moreno (9 Mar. 2013); Casa del Libro at Avda. de America (11 Mar. 2013); Libreriano Bervera (12 Mar. 2013); American Booksellers Association (13 Mar. 2013); Casa del Libro at Valladolid (16 Mar. 2013)*

If ICANN grants a .book gTLD, particular obligations should be put in place making the gTLD available

without discrimination for registrations by all eligible parties, including all commercial entities within the book industry allowing for the public to participate by registering and using second level domains under the gTLD. *Latvian Booksellers & Publishers (5 Mar. 2013); Borsenverein des Deutschen Buchhandels e.V. (5 Mar. 2013)*

ICANN should deny Amazon's closed generic TLD applications (most notably .book, .read, .author, collectively the "Book TLDs") or in the alternative require that Amazon operate such TLDs as open registries, allowing free access to competitors. *Barnes & Noble (1 Mar. 2013)*

- Amazon, the dominant player in the book industry, should not be allowed to control the Book TLDs because it would be anticompetitive, harm the openness and freedom of the Internet, and limit consumer choice and freedom of expression. *Barnes & Noble (1 Mar. 2013)*
- One of ICANN's stated goals in increasing the number of TLDs available in the DNS was to enhance competition and consumer choice. Amazon disregarded the guidance of ICANN and instead filed new TLD applications for generic terms in the very industries in which it holds significant market share with the stated goal of controlling these TLDs as closed registries. The undoubted consequence of Amazon's controlling the Book TLDs is to hand the power to Amazon to exclude competitors and exploit the generic Book TLDs for its sole benefit. *Barnes & Noble (1 Mar. 2013)*

#### .CLOUD

This TLD should not become a closed registry; it is a generic term and all organizations and/or communities that have an association with the Cloud should be allowed to use this TLD. *Unit4 Business Software (28 Feb. 2013); Cloud Industry Forum (4 Mar. 2013); Concorde Solutions (4 Mar. 2013); Webroot (4 Mar. 2013); Flexiant (4 Mar. 2013); Trustmarque (4 Mar. 2013); M. Cooter (5 Mar. 2013); VMware (5 Mar. 2013); Compare The Cloud (5 Mar. 2013); L. Goodchild (5 Mar. 2013); A. Buss (5 Mar. 2013); FAST (5 Mar. 2013); Matrix42 (6 Mar. 2013); P. Keown (6 Mar. 2013); DMH Stallard (6 Mar. 2013); Outsourcery (6 Mar. 2013); R. Miller (6 Mar. 2013); F. Kiernan (6 Mar. 2013); UKITA (6 Mar. 2013); A. Brenson (6 Mar. 2013); E. Gagne (6 Mar. 2013); ACCA (7 Mar. 2013); D. Bicket (7 Mar. 2013); S. Robinson (7 Mar. 2013); ScienceLogic (7 Mar. 2013); P. Prater (7 Mar. 2013); J. Batty (7 Mar. 2013); OFE (7 Mar. 2013); US Telecom (7 Mar. 2013)*

In the case of .CLOUD, a viable and possibly alternative option would be to place it under the control of an independent organization, free from the risk of exploitation by any one company, and use it as a positive contributor and catalyst to growth and the ongoing openness of the Cloud Computing market. *OFE (7 Mar. 2013)*

#### .GAME

It would be improper to grant the gTLD applications for .GAME because it will position the gTLD owner to gain unfair advantage over competing industry members, severely hampering competition and consumer choice; and it will provide exclusive protection for a generic industry term in conflict with well-established international precedent and norms. ICANN should deny the application for .game gTLDs, with an appropriate refund, or require that the TLDs operate as open registries. *ESA et al. (7*

Mar. 2013)

.HOTEL, HOTELS, HOTEIS, HOTELES

Closed generic applications such as these do not comply with the limited scope of the exception in the Registry Operator Code of Conduct. This provision was drafted with dot-brands in mind. It is not in the public interest to grant the exception for such generic terms. Delegating such TLDs to the applicants (who are not hotel operators but are online travel agencies) creates the risk that they will capture the whole hotel online booking system and will distort competition between online reservation platforms. *Accor (7 Mar. 2013)*

.INSURANCE, .MUTUALFUNDS, .RETIREMENT

These proposed closed generic TLDs raise significant concerns and either should be rejected as closed, or required to be operated as open registries. Longstanding trademark law principles that prevent exclusive ownership and control of generic industry terms are fully applicable to closed TLDs involving generic industry terms. *Prudential Insurance (7 Mar. 2013)*

The term “Insurance” is protected by law. If TLDs that match with such a protected term could be admitted at all, their management, supervision and use have to be regulated in a strict and transparent manner. The new domain space under this protected term has to be opened for all admitted members of this sector and cannot be monopolized. If permitted at all, such generics have to be open. *Allianz (7 Mar. 2013)*

.MAIL

A closed generic registry for .MAIL is not in the public interest and would restrict the rights and interests of the USPS. ICANN should reject any application proposing to operate the .MAIL registry in a closed manner. *USPS (7 Mar. 2013)*

.MOBILE, .PHONE, .CALL, .TALK, .APP, .CLOUD, .SEARCH

These terms are both basic and ubiquitous terms in the wireless marketplace, yet multiple applicants have submitted closed generic applications to “wall them off” for their exclusive use. Each of these terms is central to the wireless and telecommunications industry’s highly competitive market. Yet, in contravention of ICANN’s public interest rules certain applicants seek ICANN’s permission to operate these specified TLDs in a closed and potentially anticompetitive manner. *CTIA (8 Mar. 2013)*

MUSIC-THEMED TLD

As members of the music community we want to ensure that the music-themed TLD is operated in the best interests of the legitimate music community and not auctioned off in a bidding process. Only an all-inclusive, multi-stakeholder community-based application should be selected to operate a music-themed TLD with the knowledge and understanding of the music business and music community operating in a manner that respects and protects intellectual property and ensuring that there is only legitimate distribution of music. ICANN should select a music community applicant that fulfills these criteria. *A2IM & WIN et al. (32 letters) (7 Mar. 2013)*

ICANN should not accept any bids from TLD applicants who have music-themed TLD applications that have a likelihood of creating material detriment to the rights or legitimate interests of the music community. Concerns include:

- (1) Monopoly issues and registration policies that exclude significant portions of the music community from participating or registering their name(s) under the music-themed TLD;
- (2) Absence of enhanced safeguards to protect intellectual property to help reduce piracy;
- (3) Absence of an enhanced name selection policy or appropriate verification methods that would decrease cybersquatting and music community costs to protect their brand names;
- (4) Absence of a music-only use policy that would positively affect TLD content quality and mitigate reputational damage to community members;
- (5) Lack of a neutral TLD operator and multi-stakeholder governance structure representing and serving all music constituents without conflicts of interest or serving publicly-traded companies.
- (6) History of activities that negatively affect the rights or interests of the music community, such as benefitting from piracy or malware distribution or any other malicious activity.

*A2IM & WIN et al. (32 letters) (7 Mar. 2013)*

#### .MUSIC, .SONG, .TUNES

-Amazon's 3 music-themed TLDs applications violate ICANN's Core Values materially harming the music community by discriminating against their active participation in registering and operating a music-themed domain in a competitive, economically and culturally appropriate manner in all three music strings. ICANN's Affirmation of Commitments also completely contradicts Amazon's closed registry music-themed applications. The Amazon applications have serious repercussions in the area of anti-trust and are in breach of anti-trust regulations such as the Sherman Antitrust Act and EU antitrust provisions. If ICANN allows Amazon to proceed, ICANN must give the reasoning for how this land grab by Amazon serves the global public interest and expands competition in a New gTLD program launched in order to increase competition and consumer choice. .MUSIC is disappointed that the Independent Objector (IO) has not filed objections against Amazon for these three "closed" music-themed gTLDs. It is beyond doubt that Amazon's three music-themed gTLD applications harm the legitimate interests of a clearly delineated music community by discriminating against them. .MUSIC would like to understand the reasoning behind the IO's decision to allow Amazon to own a global monopoly in all three of the most popular music-themed gTLDs and how that serves the global public interest and the clearly delineated music community. *.MUSIC (7 Mar. 2013)*

#### .ROCHER

Closed generic applications such as these do not comply with the limited scope of the exception in the Registry Operator Code of Conduct. This provision was drafted with dot-brands in mind. It is not in the public interest to grant the exception for such generic terms. Delegating such TLDs to the applicant is looking for exclusive right to the TLD ROCHER despite the fact that ROCHER is a type of chocolate and that its direct competitors also sell that type of chocolate, most of them adding the term ROCHER to their trademark. ROCHER is the French translation of rock and a common family name. *Yves Rocher (7 Mar. 2013)*

### .SALON

ICANN should disqualify L’Oreal and Amazon for any anti-competitive gTLD they applied for. Applications are not to be arbitrarily changed when applicants feel like it. Therefore, L’Oreal should not be able to change its answer to Question 18 in the .SALON application. The intent of the new gTLD program is to promote competition, not give unfair monopolies. L’Oreal’s application for .SALON should be disqualified because it is anti-competitive and will give L’Oreal an unfair advantage over the competition. *C. Mendoza (25 Feb. 2013); Yves Rocher (7 Mar. 2013)*

### .SECURITY

A closed generic application for .security is anticompetitive and should not be allowed. If ICANN permits any company including Symantec (a computer company) to possess .security, then the broader security and alarm industry would be harmed and disadvantaged. It is important to keep generic domain names open for full industry participation.

*P. Labelle (27 Feb. 2013); Lanvac Surveillance (27 Feb. 2013); Surveillance Lanvac Monitoring (27 Feb. 2013); Lanvac (27 Feb. 2013); L’Aquila Electronic Systems (27 Feb. 2013); Dan (27 Feb. 2013); Houle Electric (27 Feb. 2013); Precision Protection Systems (27 Feb. 2013); Keystone Security Systems (27 Feb. 2013); Safe Tech (28 Feb. 2013); G. Girardello (28 Feb. 2013); Cairn Control Systems (28 Feb. 2013); Safe Home Security (28 Feb. 2013); Affordable Lock Services (28 Feb. 2013); Secur-Icare (28 Feb. 2013); Wilsons Security (28 Feb. 2013); Moon Security Services (1 Mar. 2013); Northern911 (3 Mar. 2013); B. Aamodt (4 Mar. 2013); Canadian Security Association (4 Mar. 2013); Tek Systems Group (5 Mar. 2013); A. Buss (5 Mar. 2013); AICC (5 Mar. 2013); B. McVeigh (6 Mar. 2013); Chubb Edward (7 Mar. 2013); Consumer Watchdog (7 Mar. 2013); ESA (7 Mar. 2013); Fitch Surveillance Systems (13 Mar. 2013)*

As an accreditor coordinator, specific objection is made to gTLDs for .service, .cloud, .technology, .certification, .training, and I am generally not in favor of the entire proposal. *J. Barry (6 Mar. 2013)*

### .TUBE and .YOUTUBE

Google’s proposal for a closed generic .TUBE is anti-competitive, contrary to general trademark principles and detrimental to the public interest, and infringes upon LAT’s established trademark rights. Google’s .YOUTUBE application is an appropriate candidate for a Code of Conduct exemption, but its .TUBE application is not. *LAT (7 Mar. 2013)*

### .WATCHES

The exclusivity granted to Richemont DNS Inc. to have sole use of the TLD in the watch industry would create an unfair advantage, and be detrimental to the industry as a whole. *Domainoo (7 Mar. 2013)*

US Telecom urges that absent substantial changes to the underlying applications, ICANN to deny the proposed closed generic TLD applications identified in Exhibit 1 of its comments (e.g., .antivirus, .call, .cloud, etc.). A single entity should not be permitted to operate a closed registry for such telecommunications and information services domain names given the generic connotation of these terms and the established industry and consumer usage of this wording. The presumptive renewal of

the registry contracts after ten years for continued operation as a closed registry would provide the registry operator with a perpetual right to use generic industry terms in violation of international intellectual property laws and principles. *U.S. Telecom (7 Mar. 2013)*

## **OTHER**

### No Position at this Time

The BC is not at this time taking a position on the ICANN Board's question of whether to create a new classification for "closed generic" TLDs. The BC will watch the progress of this issue and remains ready to answer questions from ICANN Board and staff. *BC (6 Mar. 2013)*

### Trademark Protection for TLDs

ICANN should encourage the U.S. Patent and Trademark Office (PTO) to begin providing trademark protection for TLDs, while ICANN retains authority to approve new TLD operators. *GetNewTLDs (21 Feb. 2013 & 6 Mar. 2013)*

- If trademark law were applied to TLDs, then closed generics would be permitted, since trademark law provides for an orderly process to claim generic terms as long as the generic term is not used in a way that is merely descriptive of the item or idea that the name is applied to (e.g. the word "apple" could be trademarked to sell computers). *GetNewTLDs (21 Feb. 2013 & 6 Mar. 2013)*
- Appropriate participation of the U.S. PTO is better for everyone. While ICANN would no longer have access to the potential revenues from applicants bidding against each other for a TLD string, neither would ICANN be subject to ongoing legal disputes. Registries would be better protected because ICANN would not be able to transfer a TLD from one operator to another if the Registry Operator had trademark protection. Future prospective registries would be spared the cost associated with applying for a name where a trademark already exists. *GetNewTLDs (21 Feb. 2013)*

### Definition of "Control" in the Registry Agreement

The ICANN staff's late attempt, without any public comment or reasonable rationale, to materially change and narrow the definition of control in the Registry Agreement should be rejected. The staff's clarification would seem to weaken the ability of Single-registrant models to devolve use of domains to affiliated third parties, such as Amazon sellers or Google users. Business models were developed in reliance on the original definition, which should be restated. *M. Rodenbaugh (6 Mar. 2013)*

### PIC Specification

The relationship, if any, between developing rules for so-called "closed" generic strings and the proposed Public Interest Commitment (PIC) specification is unclear. Having both issues in play at virtually the same time creates uncertainty for applicants and could facilitate loss of confidence in ICANN's ability to craft robust, defensible and clear rules for new gTLDs, which could impact the next round of the program. *M. Wong (7 Mar. 2013)*

AAP urges ICANN to explicitly link the PIC in its new gTLD Registry Agreement to the GNSO rationales regarding the promotion of competition, consumer choice, market differentiation, and geographical and service-provider diversity. If ICANN turns those rationales into “PICs,” it may add real meaning to the obligation that it undertook in the Sept. 2009 Affirmation of Commitments. It would provide important standards for ICANN’s stated commitment to “organize a review” if and when new gTLDs have been in operation for one year. *AAP (7 Mar. 2013)*

MARQUES regrets that the closed generics debate emerged at this late stage; MARQUES repeatedly called for a Public Interest test to be included in the application process during successive comment periods on the Draft AGB and hopes that such a test will be included in future rounds and that all statements made in an application including those related to Mission and Purpose will be evaluated and scored. MARQUES also hopes that the PIC process will be developed so that it is a useful tool. *MARQUES (8 Mar. 2013)*

## **TIMING ISSUES**

### Requests for Extension of Time to File Public Comments and Reply Comments

IPC requests that ICANN extend the current comment period from 7 March 2013 to 21 March 2013 to provide an opportunity for meaningful community input as required under the Affirmation of Commitments. ICANN must open a reply period consistent with its standard operating procedures, and any third party analysis or independent research commissioned by ICANN should be posted for public review and commentary. *IPC (6 Mar. 2013 & 15 Mar. 2013)*

IPO requests an extension of time to the comment period of at least 21 days and also asks that ICANN implement and post a reply period as soon as possible. *IPO (7 Mar. 2013)*

The USPS encourages ICANN to institute a reply comment period to permit responses to comments filed on this important topic. *USPS (7 Mar. 2013); COA (7 Mar. 2013)*

ICANN should extend the comment period and provide a reply period. This is a complex area which will have enormous implications for the future direction of the Internet and it is important that all stakeholders have the opportunity to consider these issues fully. Awarding a perpetual, generic TLD in any industry to an applicant based in or controlled by someone in that industry is game-changing compared with the current system which allows numerous individual entities to compete equitably in the second level of open gTLDs and ccTLDs. *P. Tattersfield (7 Mar. 2013)*

### Delay New gTLDs Launch

GE reiterates its belief that more time may be needed before the new gTLD program launches in order to prevent a rushed roll-out process and insufficient protections for stakeholders and the public. It is worth taking more time on the front end to prevent problems from arising in the first place rather than scrambling to remedy any harmful consequences after the fact. *GE (14 Mar. 2013)*

### Opposition to the New gTLD Program

It is time to consider abandoning the new gTLD program. The very existence of this comment period seeking late guidance regarding closed generic TLD applications demonstrates that the ICANN Board pushed through a half-baked proposal with artificial deadlines promoting the interests of insiders, rather than waiting until there was thorough community consensus around a solid plan. The GAC, NTIA, DOC and DOJ should open up their own independent public comment periods so they can chart a new direction. *G. Kirikos (6 Feb. 2013)*

## **Section IV: Analysis of Comments**

*General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.*

### **TLDS AND LANGUAGE CONSIDERATIONS**

A number of comments discussed the idea of certain language markers, such as generic terms, as a form of public space. These comments expressed the view that certain words or types of words should not be the province of one entity based on a gTLD application. These comments generally considered it inappropriate for any applicant to seek a TLD for a word widely used by multiple entities around the world.

Any successful TLD application means delegation to a registry operator which has a measure of control over that term at the top level of the DNS, including possible establishment of registration policies for the TLD. Comments indicated that certain terms carry sensitivities in this regard, or could be considered misappropriated based on certain kinds of uses.

### **COMPETITION AND INDUSTRY TERMS**

The sensitivity expressed in many comments about use of generic terms was particularly noted in relation to industry categories or terms that are viewed as being misappropriated by a particular player or competitor within an industry. Comments expressed concern that one entity controlling a top-level domain term related to that industry would mean that the operator could set policies in an anti-competitive manner, with detriment to other competitors or to consumers. One industry player having the advantage of an industry-related TLD to use for its own purposes, even without any deliberate anti-competitive intent toward other players in the industry, was seen by some commenters as unfair.

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 or 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 result in confusion due to the varying business models in the space.

### **APPLICABILITY 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 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.

It should be clarified that allocation of top-level domains is not based on intellectual property rights, and ICANN is not seeking to perform such a role. Rather, ICANN reviews gTLD applications against technical, operational, and financial requirements. However, as discussed below, some commenters still considered that principles of trademark law in relation to analysis of what is generic are well-established and could be useful to ICANN in considering this issue.

### **DEFINITIONS AND OTHER SUGGESTIONS**

The topic overview for the public comment forum noted that” “[i]n particular, comments would be helpful in regard to proposed objective criteria for: (i) classifying certain applications as ‘closed generic’ TLDs, i.e., how to determine whether a string is generic, and (ii) determining the circumstances under which a particular TLD operator should be permitted to adopt ‘open’ or ‘closed’ registration policies.” Comments included a number of constructive suggestions, as described below.

Comments that addressed these elements generally expressed 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 to this would require consideration of the uses and meanings of terms in many languages, and also noted a need to account for the possibility that what is generic may 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 for approaching this issue included defining the conditions under which any TLD would be permitted to be “closed,” rather than categorization according to a definition of generic. Other comments suggested that applicants could demonstrate non-genericness through means such as demonstrating the existence of trademark rights in a defined number of jurisdictions, using public information to identify which terms represent an industry. Another comment suggested that an equitable approach could be established, such as granting a limited initial period during which any TLD would be permitted to operate in a “closed” manner if desired, after which all TLDs would be required to operate in an “open” manner according to certain requirements. In most cases, it appears that additional work to define characteristics of “open” and “closed” operations would be necessary.

#### **ICANN’S ROLE IN REGISTRATION POLICY**

A number of comments approached the topic in terms of considering the appropriate role of ICANN. Some expressed that ICANN is not a competition authority and should rely on the proper government and public authority channels to resolve any competition issues that might emerge. Other comments suggested that adoption of rules for “closed generics” would lead ICANN into content-related matters, whereas according to the mission of the organization as defined in the Bylaws, ICANN should only be making policy determinations related to its technical functions. Other comments cited ICANN’s public interest role and indicated that taking action related to TLD business models as related to domain name registration policies would be appropriate due to the public interest concern about the issue.

#### **SUPPORT FOR ESTABLISHED PROCESSES**

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 relating to closed generic TLDs at the present stage would be inconsistent with the principles 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 regarding New gTLDs 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."

### **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 among business models, including "closed generic," 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.

### **TIMING**

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