

Chronological History of ICM's Involvement with ICANN as of 31 March 2011

- ICM Registry, a private company, submitted a proposal in ICANN's 2000 Proof of Concept round, proposing two unsponsored gTLD strings - .KIDS and .XXX, available at <http://www.icann.org/en/tlds/kids3/>. The evaluators in the Proof of Concept round recommended against the inclusion of either the .KIDS or the .XXX TLD strings in the Proof of Concept round.
<http://www.icann.org/en/tlds/report/report-iiib1c-09nov00.htm>.
- In December 2000, ICM, along with many other applicants in the Proof of Concept round, filed Reconsideration Requests with ICANN's Board regarding the outcome of the Proof of Concept Round. Part of ICM's Request discussed the lack of uniformity in the adult entertainment community, and raised concerns with the community-based issues raised by the Proof of Concept evaluators. The Reconsideration Committee's 2001 recommendation noted that a failure to be selected in the Proof of Concept round was not a reflection on the proposal, and did not reflect a rejection of that proposal.
- In 2004, ICM submitted a proposal for .XXX as an sTLD string (as opposed to an unsponsored gTLD), after the sTLD application process was launched in December 2003. As an sTLD must have a sponsoring organization to oversee the policy development for the sTLD, ICM stated that the International Foundation for Online Responsibility, or the IFFOR, would serve in that role. The Sponsored Community was defined as "the responsible online adult-entertainment community." The "online adult-entertainment community" is further defined as those individuals, businesses, and entities that provide sexually-oriented information, services, or products intended for consenting adults or for the community itself."
- ICANN's Independent Evaluation Panels reviewed the ICM application throughout 2004. As part of the Evaluation reports, in August 2004, ICANN received a report that ICM's application failed the baseline sponsorship criteria of the sTLD process. Prior to issuing the report, the Independent Evaluation Panel provided a list of questions – focusing on sponsorship issues – to ICM and IFFOR, and ICM and IFFOR provided a joint response to those questions.
- In April 2005, ICM provided a presentation on the proposed .XXX sTLD to the ICANN Board, and the Board continued having discussions on ICM's meeting of the baseline criteria for a "sponsored community."
- On 1 June 2005, the ICANN Board authorized the ICANN President and General Counsel to enter into negotiations with ICM relating to the proposed commercial and technical terms of a Registry Agreement for the .XXX sTLD. The Agreement was to be presented to the Board for approval – as all ICANN gTLD Registry Agreements are.

- In July 2005, ICANN's Governmental Advisory Committee (GAC), in its Luxembourg Communiqué, invited ICANN to hold consultations on the implementation of new Top Level Domains, highlighting the significant public policy issues that arise with the introduction of new TLDs.
- In August 2005, ICANN began receiving individual communications from governmental representatives – including the then-Chair of the GAC – noting concerns over the ICM application and stating that the Board should allow time for additional governmental concerns to be heard before reaching a final decision the proposed .XXX sTLD.
- On 15 August 2005, ICM requested that the ICANN Board defer final approval of the ICM Registry Agreement and Application until a September 2005 meeting of the Board. The Board agreed to defer consideration until 15 September 2005. On 16 August 2005, the Agreement was posted for public comment at <http://forum.icann.org/lists/xxx-comments/mail34.html>, and nearly 2000 comments were received.
- ICANN then started receiving substantial communications both in support and against the creation of the .XXX sTLD. One of these communications was from the Free Speech Coalition; a trade association of the adult entertainment industry, stating the ICM distorts the support received from the adult entertainment industry. Throughout the consideration of ICM's application ICANN would receive additional communications from other participants in the adult entertainment industry indicating that they no longer supported ICM or IFFOR's ability to represent the sponsored community identified in ICM's application.
- At the 15 September 2005 meeting of the Board, the Board expressed concerns about the .XXX sTLD agreement and amount of correspondence received on the issue, and directed the President and General Counsel to discuss possible additional contractual provisions to address the Board's concerns. As requested in a September 2005 letter from member of the GAC reiterating points made in the Luxembourg Communiqué, the ICANN Board agreed to defer any Board decision on the ICM application until at least December 2005, to allow the GAC time to consider the issue further. ICANN also posted a status report on the sTLDs. ICANN continued receiving communications regarding the proposed .XXX sTLDs.
- At the end of November 2005, the GAC held a meeting where both the ICANN Board and ICM made presentations on ICM's application.
- In March 2006, the GAC issued its Wellington Communiqué, noting that insufficient detail was provided by ICANN to support that the Independent Evaluator Team's concerns regarding the failure to meet the sponsorship criteria had been met. The GAC also noted its opposition to the introduction of the .XXX

sTLD.

- After the receipt of the Wellington Communiqué, the Board requested a review of all publicly received inputs and to make recommendations to the Board regarding amendments to the proposed sTLD Registry Agreement to address the concerns raised.
- In April 2006, a revised proposed sTLD Registry Agreement was posted for public comment at <http://forum.icann.org/lists/xxx-tld-agreement/mail11.html>. 632 emails were received on the public comment forum.
- On 10 May 2006, the Board voted against approval of the ICM sTLD Registry Agreement. ICM then initiates a Request for Reconsideration of the denial, which was withdrawn prior to deliberation, in favor of submitting additional information to ICANN in support of ICM's application. While the Reconsideration Request was pending – and without ICANN involvement or approval – ICM begins pre-registration of .XXX domain names.
- On 5 January 2007, another revised proposed sTLD Registry Agreement was posted for public comment. Over 1800 comments were received. <http://forum.icann.org/lists/xxx-icm-agreement/mail31.html>.
- The Board considered the revised sTLD Registry Agreement at its February 2007 meeting. ICM provided additional information for the Board just two days prior to the meeting. At the February meeting, the Board noted concerns over the amount of support from a sponsored community and whether ICM met these criteria of the sTLD process. The Board instructed staff to provide information, as well as the posting for public comment of additional revisions to the proposed sTLD Registry Agreement.
- In March 2007, ICM provided a briefing to the Board and submitted additional material for the Board's consideration on sponsorship issues.
- After receiving notification from the Board that the .XXX sTLD Registry Agreement would be up for Board consideration again, the GAC produced the Lisbon Communiqué, reaffirming the GAC's position against the introduction of the .XXX sTLD.
- On 30 March 2007, the ICANN Board voted to reject the revised proposed sTLD Registry Agreement and deny ICM's application for the .XXX sTLD, based in large part on ICM's failure to meet the sponsored community criteria specified in the sTLD criteria.
- On 6 June 2008, ICM filed a request for Independent Review of the Board's action, initiating the Independent Review process pursuant to ICANN Bylaws, Article IV, section 3 (see <http://www.icann.org/en/general/bylaws.htm#IV>).

The papers filed by ICM and ICANN are located at <http://www.icann.org/en/irp/icm-v-icann.htm>.

- The three-member Independent Review Panel held a five-day hearing from 21-25 September 2009 during which both parties submitted written and live testimony.
- The Independent Review Panel issued its Declaration on 19 February 2010. The Declaration is available at <http://www.icann.org/en/irp/icm-v-icann/irp-panel-declaration-19feb10-en.pdf>.
- On 12 March 2010, in accordance with the Bylaws, the Board considered the Panel's Declaration. The Board noted, "in the absence of the process for approving an sTLD six years following the receipt of the original application, the Board wishes to create a transparent set of process options which can be published for public comment." *See* <http://www.icann.org/en/minutes/resolutions-12mar10-en.htm>.
- On 26 March 2010, a draft report and explanatory diagrams describing ICANN's Options following the IRP Declaration on ICM's .XXX Application were posted for a 45-day public comment period, at <http://www.icann.org/en/public-comment/#icm-options-report>. ICANN received over 13,000 comments into the forum – the highest number of comments ever received on a single topic, though many of the comments did not address the substance of the process options document. The Board was provided with a summary and analysis of those comments for consideration of further action on the Panel's Declaration. The Summary and Analysis of Comments is available at <http://forum.icann.org/lists/icm-options-report/msg13297.html>.
- At its 25 June 2010 meeting in Brussels, the Board determined the process it would follow in considering the IRP Panel's Declaration. Further, the Board resolved to "act in accordance with the following findings of the Independent Review Process Majority: (i) 'the Board of ICANN in adopting its resolutions of June 1, 2005, found that the application of ICM Registry for the .XXX sTLD met the required sponsorship criteria;' and (ii) 'the Board's reconsideration of that finding was not consistent with the application of neutral, objective and fair documented policy.'" *See* <http://www.icann.org/en/minutes/resolutions-25jun10-en.htm#5>.
- Also on 25 June 2010, the Board directed "staff to conduct expedited due diligence to ensure that: (1) the ICM Application is still current; and (2) there have been no changes in ICM's qualifications." *See* <http://www.icann.org/en/minutes/minutes-25jun10-en.htm>.
- ICANN staff conducted the expedited due diligence on ICM, which showed that the ICM Application remains current and that there have been no negative

changes in ICM's qualifications.

- ICM also provided ICANN with a new proposed registry agreement that included additional provisions, requirements and safeguards to address the issues that the GAC and other community members had raised with respect to the previously proposed agreement. ICM also provided other supporting information.
- On 5 August 2010, the ICANN Board authorized staff to post for public comment ICM's supporting due diligence materials and proposed registry agreement for the .XXX sTLD. The Board also directed staff, upon completion of the public comment period, to provide the Board with a summary and analysis of comments and recommend whether the proposed registry agreement is consistent with GAC advice on the proposed .XXX sTLD. See <http://www.icann.org/en/minutes/minutes-05aug10-en.htm>. The ICM materials were posted at <http://www.icann.org/en/public-comment/#xxx-revised-icm-agreement>, and over 700 comments were received, and a summary and analysis of those comments was posted at <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00723.html>.
- At the 28 October 2010 Board meeting, staff provided the Board with its recommendation as to whether the proposed registry agreement is consistent with GAC advice. Three areas where the approval of a registry agreement may be in conflict with GAC advice were identified, though the registry agreement otherwise appears to contain sufficient protections to address earlier stated concerns by the GAC. A chart of the identified areas of potential conflict is available at <http://www.icann.org/en/tlds/agreements/xxx/icm-gac-advice-chart-28oct10-en.pdf>.
- In December 2010, while in Cartagena, Colombia, the Board and the GAC met twice regarding a consultation over GAC advice. After these sessions, on 10 December 2010, the Board noted its agreement with the staff's assessment of potential conflicts with GAC advice if the Board proceeds with its determination to enter a registry agreement with ICM Registry for the .XXX sTLD, and invoked the GAC consultation process as provided for in ICANN Bylaws section Article XI, Section 2, Paragraph 1(j). See <http://www.icann.org/en/minutes/resolutions-10dec10-en.htm#4>.
- On 28 January 2011, the Board directed staff to provide the GAC with a document clearly setting out the Board's position on GAC advice for further GAC consultation. The Board established that the Bylaws consultation on ICM, triggered in Cartagena, shall take place no later than Thursday, 17 March 2011. The Board's position paper was sent on 11 February 2011, and is available at <http://www.icann.org/en/correspondence/jeffrey-to-to-dryden-10feb11-en.pdf>.

- On 16 March 2011, the GAC submitted a letter to the Board clarifying GAC advice on the application for the .XXX sTLD.
- On 17 March 2011, noting that there were areas where the Board's entering into a registry agreement with ICM may not be consistent with GAC advice, the Board and the GAC held a formal consultation in San Francisco, California. This consultation fulfilled the Bylaws requirement.
- On 18 March 2011, the ICANN Board authorized ICANN to enter into a registry agreement with ICM for the operation of the .XXX sTLD. The Board identified that this decision was not consistent with GAC advice, and provided a detailed rationale, including the reasons that the Board differed from that advice.
- On 31 March 2011, ICANN and ICM entered into a Sponsored TLD Registry Agreement for the operation of the .XXX sTLD. ICM also signed an Agreement and General Release, releasing all ICANN from potential claims that ICM may have had relating to ICANN's consideration of ICM's application.