

I welcome the opportunity to provide comments on the proposed Renewal of the Registry Agreement for the .XXX top-level domain (TLD) (“**the Proposed RA**”) and note the many highly significant changes therein as compared to the existing expiring Registry Agreement for the said TLD (“**the Existing RA**”).

I would like to begin by strongly supporting the proposed imposition of enhanced obligations emanating from:

- The 2024 Global Amendment to the Base RA regarding disrupting DNS Abuse;
- The 2023 Global Amendment to the Base RA regarding operating requirements for the Registration Data Access Protocol (RDAP);
- The Base RA provisions regarding registry operator code of conduct obligations, separation from related parties that offer registrar or registrar-reseller services, and annual certification of compliance with the code of conduct provision; and
- The Base RA provisions related to the use of registrars and registry-registrar agreements - in respect of uniform and non-discriminatory agreement with authorized registrars, standardizing requirements for registry operator pricing for initial domain name registrations and renewals, and providing a process for material or potentially material changes to registry-registrar agreements to be reviewed and approved.

However, there are certain proposed modifications in the Proposed RA, from a process standpoint and/or in establishing a precedent for both existing and future registry operators in its dealings with ICANN, that raise significant concerns. These concerns are summarized as follows:

- Changes to the set of voluntary commitments which the Registry Operator had committed to as contained in the Existing RA Appendix S have been proposed without either having provided a rationale for the same or having undergone the [Registry Services Evaluation Policy \(RSEP\)](#) as required by ICANN Consensus Policy. For more details, please refer to the Rationale section.
- All other Sponsored Registries from the 2004 round, with the exception of .MOBI and .POST TLDs, have had their original Sponsored TLD registry agreements renewed by transposing most of their respective commitments contained in Appendix S, to a (new) Specification 12. There appears to be no compelling reason why the same approach should not apply to .XXX TLD.
- The practice of standardizing Registry Agreement renewals to match the Base Registry Agreement (Base RA), while a good step to achieve efficiencies for ICANN org, does not justify the deprecation or omission of certain commitments and excellent practices which the Registry Operator had agreed to undertake and apparently did not comply with, again with no rationale provided. To this end, close alignment with the existing, similar concept .ADULT, .PORN, and .SEX Registry Agreements should not be the main goal of the .XXX RA renewal.
- It would be prudent for ICANN to demand the appointment of an approved independent third party auditor (in place of IFFOR) to monitor and evaluate ICM’s compliance with its “prevailing Baseline Policies”. Placing this responsibility on an approved independent third

party auditor not only preserves the original position, but also offers greater assurances of and safeguards the trust of the end-user community in respect of ICM's compliance to its commitments as well as in ICANN's resolve to enforce registry agreement obligations, as compared to just accepting the ICM CEO's certification of compliance in this regard.

- In light of the Public Interest Commitments & Registry Voluntary Commitments Framework ("PICs & RVCs Framework") being spearheaded by the ICANN Board, the apparent move to now formally allow deprecation and/or omission of voluntary contractual commitments, especially without undergoing due process, neither reflects nor bodes well on efforts that the ICANN Board is working with the ICANN Community to firm up the PICs & RVCs Framework.

Recommendation

ICANN should reconsider the Proposed RA and include the following provisions into a Specification 12:

- a. To require the Registry Operator to, by itself or a third party, authenticate and verify the registration data elements of registrant status (i.e. (natural/legal) person, name, address, email and telephone) and to continue the use of the Membership Contact ROID as originally set forth in the original Registry Agreement;
- b. To require the Registry Operator to retain the original Registrant eligibility criteria restricting registrations to individuals or organizations that:
 - i. provide online adult entertainment intended for consenting adults ("Providers");
 - ii. represent Providers ("Representatives"); or
 - iii. provide products or services to Providers and Representatives ("Service Providers").
- c. To require the Registry Operator to enforce labeling and monitoring of all domains within the .XXX zone file
- d. To require Registry Operator to publish, at least quarterly, a report on Anti-Abuse metrics following industry best practices that includes at least the following data points: DNS Abuse (types and resolution breakdown by registry/registrar); Court Ordered Actions; and CSAM.
- e. To require the Registry Operator to engage another, independent third party - not IFFOR - to monitor and/or audit the Registry Operator's compliance with the IFFOR-developed domain registration and abuse policies;

All of these requirements would preserve the key commitments that the Registry Operator had originally committed as part of it originally obtaining the right to operate the TLD.

Rationale

1. Non-Compliance with ICANN Consensus Policy

Unauthorized Changes to Registrant Verification and Authentication Procedures

Appendix S, Part 4.1 of the Existing RA stated that the Registry Operator (ICM) would publish “**authentication and verification procedures**” regarding Registrants seeking to register a .XXX domain. A copy of the original authentication and verification procedures implemented by Registry Operator are published.¹ These authentication and verification procedures included a separate authentication and verification path for natural and legal persons, address verification (not mere validation), telephone verification, and email verification. It appears that Registry Operator unilaterally lowered the registrant authentication and verification process without filing a consideration request under the [Registry Services Evaluation Policy \(RSEP\)](#) as required by ICANN Consensus Policy and existing precedent, when they failed to renew its original contract with 192.com.² Additionally, the Proposed RA shifts the burden of registrant authentication and verification from a mandatory obligation imposed on Registry Operator to an obligation that the Registrant must self-warrant.

2. Omission of Specification 12 from the Proposed RA

Every other Registry Operator from the 2004 Sponsored Round that has renewed their Registry Agreement, with the exception of .MOBI, has converted their original Appendix S of their sponsorship agreement, into a Specification 12 to their Registry Agreements. In light of such precedents, there appears to be no reason why .XXX should not also have their original Appendix S converted into a Specification 12. Any attempt to achieve close alignment with the existing, similar concept .ADULT, .PORN, and .SEX Registry Agreements by a supposed expanded set of voluntary Public Interest Commitments (PICs) in Specification 11 should not be the main goal of the .XXX RA renewal simply because these 3 TLDs appear to be operated by the same group of registries.³

There may be situations that arise where fundamental changes in the DNS marketplace may necessitate a change to a sponsored Registry Agreement to a non-sponsored one. This was the case in connection with .MOBI whose original business model was based on the limited screen space of Blackberry and Razor flip phones back in 2004 that was rendered obsolete by the invention of the iPhone in 2007. However, there appears to have been no corresponding change in the adult entertainment community justifying the proposed changes by ICM.

¹ See:

<https://community.icann.org/pages/viewpage.action?pageId=320405519&preview=/320405519/321650739/ICM-Membership-Flow-Verification%20copy.pdf>

² Both fTLD (RSEP-2017039) and Verisign (RSEP-2023055) were required by ICANN to file an RSEP when modifying their registrant verification business practices, see <https://www.icann.org/resources/pages/rsep-2014-02-19-en>

³ Per <https://www.icann.org/en/registry-agreements>, .ADULT is operated by ICM Registry AD LLC; .PORN is operated by ICM Registry PN LLC; and .SEX is operated by ICM Registry SX LLC.

To be clear, I am not objecting to the removal of the IFFOR as the Sponsoring Organization for the .XXX TLD, but the removal of the original Registrant restrictions that limited registration to individuals and organizations that: provide online adult entertainment intended for consenting adults ("Providers"); represent Providers ("Representatives"); or provide products or services to Providers and Representatives ("Service Providers"), as discussed in our section 3 below and which we believe ought to reside in a Specification 12. In the absence of any justification or rationale, we can only assume that these removals have been proposed for the Registry Operator's own economic self-interest and enrichment.

The removal of all Registrant eligibility criteria from Specification 12 basically converts .XXX to a generic, non-sponsored, non-community TLD. While these Registrant eligibility criteria generally match the other adult-centric TLDs delegated through the 2012 round, those other TLDs did not recognize the economic and first mover advantage that .XXX received by participating in the 2004 round where only Sponsored Registry Operators were allowed to apply. Equity and fairness dictate that Registry Operator should retain the original Registrant restrictions in a Specification 12 just like every other Registry Operator from the 2004 Sponsored Round with the exception of .MOBI for the reasons discussed above.

3. Substantial Deviation Between Existing RA Appendix S and Proposed RA Specification 11

ICM has proposed three substantive changes in migrating its Registry Operator legal obligations from Appendix S to Specification 11, as opposed to Specification 12, that raise strong concerns.

The first substantive change involves deviation from the original Registrant "authentication and verification" process implemented by Registry Operator. Under the original agreement the Registry Operator had an affirmative obligation regarding "authentication and verification" of Registrants. Registry Operator is now proposing in Specification 11 to remove this affirmative obligation and defer primarily to Registrant self affirmation.

The second substantive change involves website Child Protection labeling and monitoring. Under the original Appendix S, IFFOR was required to contract with a third party for "labeling and monitoring" services, however, under the proposed Specification 11 these former mandatory obligations have become optional, note: "*Registry Operator may label the sites.*"

The third substantive change involves who is eligible to potentially register in the TLD. Under the original Appendix S, registration was limited to individuals and organizations that: provide online adult entertainment intended for consenting adults ("Providers"); represent Providers ("Representatives"); or provide products or services to Providers and Representatives ("Service Providers").

4. Enhanced Anti-Abuse Metrics Reporting

The Registry Operator should be required to publicly publish, on an at least quarterly basis, a detailed Anti-Abuse Metrics report. This action is warranted with the intended depreciation of IFFOR and the Ombuds which it had employed to monitor the .XXX registry. Identity Digital and

Public Interest Registry (PIR) in their respective Anti-Abuse Reporting currently set the bar for an industry best practice.⁴ Given that the Registry Operator is an affiliate of an Internet Watch Foundation (IWF) member, it should not be a problem to incorporate them as a trusted notifier.⁵ Moreover, PIR has graciously offered the entire domain name industry, including both gTLD and ccTLDs, a free IWF subscription service that includes both IWF Domain Alerts and the IWF Top-Level Domain Hopping List service.⁶

⁴ A recent Identity Digital Anti-Abuse Report - https://assets-global.website-files.com/644d37e47398154bd8f7a45e/65df8321a73c42b93fcf7d2d_Anti-Abuse-Report-Q3-23.pdf and a recent PIR Anti-Abuse Report - <https://thenew.org/org-people/about-pir/resources/anti-abuse-metrics/>

⁵ <https://www.iwf.org.uk/membership/our-members/>

⁶ <https://www.iwf.org.uk/membership/iwf-domain-services/>