



November 30, 2016

Internet Corporation for Assigned Names and Numbers  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094-2536

Re: Proposed Amendment No. 4 to .XXX Registry Agreement

Dear ICANN,

ICM Registry seeks to remind the ICANN community, as well as ICANN's board and staff, of ICM Registry's policy-making authority for the .XXX sTLD. Some of the comments submitted in response to the proposed Amendment incorrectly assert that ICM Registry has delegated *all* policy-making decisions and authority to its sponsoring organization, the International Foundation for Online Responsibility (IFFOR). These same comments claim that IFFOR is the policy making body for the .XXX sTLD with respect to all .XXX policies except for consensus-based GNSO policy. They go on to assert that trademark protections, including the URS, are clearly within the IFFOR remit. However, as evidenced in the express terms of the .XXX Agreement, this is inaccurate.

***ICM Registry's policy-making authority for .XXX was established through extensive multi-stakeholder processes that lead to the original .XXX Registry Agreement. ICM Registry's ability to develop the policies stated in the proposed .XXX Agreement No. 4 is prescribed in the DotXXX Charter. The DotXXX Charter, referred to as Appendix S, identifies the purposes for which the .XXX sTLD was delegated and the community to be served by the delegation. (See: <https://www.icann.org/resources/unthemed-pages/appendix-s-2011-03-31-en>).***

***Appendix S, Part 2 of the .XXX Agreement specifically describes the areas that ICM Registry has independent policy-making authority. In particular, Sections 10 (c)(ii), (iii), (v), (vi) and Section 11 provide ICM Registry with the authority to create the proposed policies and terms.***

***Section 10 (c)(ii) expressly states that the Registry Operator shall have the delegated authority regarding Registry/Registrar relations and channel management, including the terms and conditions contained in the registry/registrar agreement;***

***Section 10 (c)(iii) expressly states that the Registry Operator shall have the delegated authority regarding terms and conditions required to be included in the end-user registration agreement;***

***Section 10 (c)(v) expressly states that the Registry Operator shall have the delegated authority regarding mechanisms for resolution of disputes between owners of rights in names (such as trademarks) and registrants;***

***Section 10 (c)(vi) expressly states the Registry Operator shall have the delegated authority regarding mechanisms for enforcement of registration restrictions and policies; and***

***Section 11 expressly states that the Registry Operator shall have the delegated authority regarding any other policies or practices not inconsistent with the Agreement, ICANN Temporary Specifications and Policies, or Consensus Policy.***

Appendix S, Part 2 of the .XXX Agreement is included below ***(emphasis added)***:

Registry Operator shall have delegated authority to develop policy for the sTLD in the following areas:

Product Management

1. Establishment of domain naming conventions to be used in the sTLD.
2. Functional and performance specifications for Registry Services, other than those specified in Appendix 7 of the Agreement.
3. Consistent with any condition under which a Registry Service has been approved, management responsibility for all Registry Services and products, including but not limited to:
  - a. Variations, modifications, or extensions of Registry Services that do not represent material changes to previously approved Registry Services.
  - b. Changes to policies and restrictions associated with or necessitated by approved Registry Services as outlined in Clauses 6, 7 and 8 below.
  - c. Pricing.
  - d. Promotions and promotional products, packaging or pricing.
  - e. Branding, naming, or other marketing activity.
  - f. Modification of deployment timelines, rollout plans, and implementation details for approved Registry Services.
  - g. Withdrawal and suspension of all but basic Registry Services (second level registrations); provided, however, that obligations with registrants

existing at the time of the withdrawal or suspension are honored.

4. Reservation of names to be offered for registration other than on a first-come, first-served basis and creation of the policies and procedures under which such names may be registered.

5. Identification and reservation of names that are not available for second level registrations and as to which third level names will be offered for registration to end users, as well as developing the terms and conditions under which such registrations shall be offered.

#### Restrictions on Registration and Policies for Use of Domain Names

6. Reservation of names to be withheld from reservation in the sTLD (in addition to those names reserved by ICANN and set forth in a schedule by ICANN).

7. Policies regarding eligibility to register a domain name in the sTLD, which need not be uniform for all names within the sTLD.

***8. Restrictions and policies on how registered names may be used, which need not be uniform for all names within the sTLD, and which may vary, for example, by type, name, or registrant category.***

***9. Establishment of policies applicable to registrants and/or registrars related to information, products, services, end-user addressing, operations, eligibility verification, and registration procedures within the domain, consistent with industry and technology standards and practices.***

#### Operational Policy and Performance Management

10. Except as specifically set forth in the Agreement, matters related to operation of the registry and the sTLD, including, without limitation:

- a. Performance of eligibility and name-selection services (ENS) either directly by the Registry Operator or by one or more organizations or individuals to which it delegates the responsibility for performing such services;
- b. Operational capability decisions, including location, staffing, organization structure, capital expenditure, suppliers and, consistent with ICANN approved policies related to selection and management of ICANN-Accredited Registrars, distribution and promotional channels;



c. Other operations-related processes and procedures, including but not be limited to:

- i. Internal operations of the Registry Operator;
- ii. Registry/Registrar relations and channel management, including the terms and conditions contained in the registry/registrar agreement;**
- iii. Terms and conditions required to be included in the end-user registration agreement;**
- iv. Articulation and management of the relationship between Registry Operator and IFFOR, and establishing the terms and conditions under which they interact;
- v. Mechanisms for resolution of disputes between owners of rights in names (such as trademarks) and registrants;**
- vi. Mechanisms for enforcement of registration restrictions and policies;** and
- vii. Provisions for publication of registry and registrar data.

Other

**11. Any other policies or practices not inconsistent with the Agreement, ICANN Temporary Specifications and Policies, or Consensus Policy.**

As indicated herein, ICM Registry has the authority to develop the policies, terms and procedures proposed in the .XXX Agreement Amendment No. 4 and to negotiate directly with ICANN just like other sTLD registry operators have had the ability to develop policies, terms and procedures for delineated areas of their sTLDs and to negotiate their new terms and agreements with ICANN.

Respectfully Submitted,

Stuart Lawley, CEO