

Summary and Analysis of Comments for Revised Proposed Registry Agreement for .XXX sTLD and Due Diligence Documentation.

Comment Period: 24 August 2010 to 23 September 2010

This summary is not a full and complete recitation of the relevant comments received. It is an attempt to capture in broad terms the nature and scope of the comments. The summary has been prepared in an effort to highlight key elements of these submissions in an abbreviated format, not to replace them. Every effort has been made to avoid mischaracterizations and to present fairly the views provided. Any failure to do so is unintentional.

BACKGROUND

On 25 June 2010, the Board of Directors determined to accept and act in accordance with some of the Independent Review Panel's findings in relation to ICM Registry LLC's (ICM) challenging ICANN's denial of ICM's application for the .XXX sTLD.

The Board of Directors directed ICANN staff to conduct expedited due diligence of ICM and to proceed into draft contract negotiations with ICM (board resolution 2010.06.25.20). See <http://www.icann.org/en/minutes/resolutions-25jun10-en.htm#5>.

On 5 August 2010, the Board directed staff, upon receipt of ICM's application documentation, to post ICM's supporting documents and proposed registry agreement for public comment for a period of no less than 30 days. See <http://www.icann.org/en/minutes/resolutions-05aug10-en.htm#9>.

SUMMARY AND ANALYSIS

General Overview

Approximately 720 comments were received during the public comment period.¹ A small number of postings were identified as sent in error, obvious spam, or repeat postings, and every attempt is made to exclude these postings from statistical analysis. In addition, the total comments do not necessarily equal the number of individual commenters, as some made multiple (though not duplicate) submissions, ICANN reviewed each of the submissions received.

As evidenced in prior public comment periods during the course of ICM's application for the .XXX sTLD, many comments addressed the general merits of a .XXX sTLD, and did not address the documents on which ICANN was seeking comment. Here, ICANN was seeking comment on the substance of ICM's due diligence materials and draft .XXX sTLD Registry Agreement, yet ICANN instead received substantial numbers of comments "for" or "against"

¹ Comment submissions are posted in the chronological order they are received by ICANN systems at ICANN's main offices at Marina del Rey, California (UTC-7). The date and time stamp in the submission header is applied by the sender's system and does not necessarily correspond with the date and time received by ICANN. Because of the limited number of submissions received after the formal close of the comment period, all are included in this summary.

entering a Registry Agreement without reference to the content of the agreement or the due diligence materials posted.

A majority of comments originated from a variety of email and webform campaigns. For example, over 400 comments in support of approving the .XXX sTLD appear to have originated from a campaign run by ICM. There were also a substantial number of form or campaign postings in opposition to the .XXX sTLD, generated from a few different campaign sources. The campaigns which addressed the substance of the public comment period are discussed in the main summary sections below, with more detailed extract summaries set out in Appendix A.

Due to the large number of submissions, it is not feasible to provide a summary of each individual comment. Further, many comments, while providing substantive analysis of the items posted for comment, re-state the positions put forth by other commenters. To that end, ICANN does not provide links to each of the related positions, but has attempted to make sure that the substance of the comments is reflected here.

As with other voluminous public comment periods, ICANN applied the following criteria to each submission to identify, which would be individually summarized:

- (1) The submission must substantively discuss the Registry Agreement or Due Diligence documentation posted for public comment. Submissions that only contain a statement such as “sign the Registry Agreement” or “no to the Registry Agreement” are not individually summarized. Submissions that provide discussion on the general merits or perceived issues with the introduction of the .XXX sTLD, or impressions regarding the overall process surrounding the ICM application were not individually summarized, though information about those submissions are provided in the statistical analysis.
- (2) The submission is not visibly a form response or substantially similar to a form response. ICANN attempts to identify each major thread of form responses outside of the individual summary section.
- (3) The submission must contain substantial discussion capable of summarizing.

SUMMARY OF INDIVIDUAL SUBMISSIONS

George Kirikos, President of Leap of Faith Financial Services, Inc., provided comments in opposition to the draft .XXX sTLD Registry Agreement. Mr. Kirikos cited: (1) lack of support of the adult industry, with a self-defining – and unidentified – segment of the adult community serving as the sponsoring community; (2) lack of support from the broader Internet community, stating that all new TLDs should serve the broader public interest and should be subject to a “costs vs. benefits analysis”; (3) the .XXX sTLD Registry Agreement does not include price caps, which could create premium pricing for high value domain names, as well as place registrants at risk of unlimited increases in fees. Further, all TLD agreements should contain price caps; the lack of price caps in one registry agreement could induce other registries with price caps in their agreements to seek removal of those caps under “equitable treatment” clauses; and (4) the trademark protection provisions require the community to take time and money to make defensive registrations, while ICANN places its names on a reserved list for free. <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00000.html>.

“Itzmail” commented that Whois Privacy Protection should be allowed in the .XXX sTLD to protect free speech in restrictive regimes. <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00001.html>. Another commenter, Eric Shannon, states “ICANN should not allow whois privacy.” See <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00004.html>. Mr. Shannon’s call for elimination of Whois privacy appears to relate to minimization of costs for the protection of trademarks.² In response to Itzmail’s comment, Stewart Lawley – on behalf of ICM – clarified that approved proxy services are authorized under the proposed Registry Agreement. <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00002.html>.

Quentin Boyer, Director of Public relations at Pink Visual, notes the difficulties surrounding ICANN’s consideration of ICM’s application, and echoes the concerns raised by others regarding the self-definition of the sponsored community. Mr. Boyer notes that even if sponsorship is a closed issue, “ICANN ought to at least require ICM to define the “Policies and Best Practices that the Sponsored Community has (by ICM’s own definition) apparently already ‘agreed’ to.” Mr. Boyer also provided guidance to ICANN in considering future sTLDs, stating “ICANN should also establish objective criteria for demonstrating the support of the affected business sector at issue in any sTLD proposal.” Mr. Boyer concludes that the Registry Agreement as written ignores the community that should be properly represented here, and will serve the interests of ICM and third party registrars to profit from sales in the .XXX sTLD. <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00048.html>.

Diane Duke, on behalf of the Free Speech Coalition, provided a lengthy letter. She urges that the “Board should not be prepared to approve ICM’s application unless it is convinced that ICM can actually accomplish what it promises.” Ms. Duke raises many questions regarding the sufficiency of the sponsored community when there already exists a community of responsible online adult entertainment providers – those who subscribe to the FSC’s code of ethics – and those providers do not support the ICM application for the .XXX sTLD. Ms. Duke raised the issue of confusion or misrepresentation regarding the level of support for the sponsorship community. One issue is the concern that those who pre-registered in the .XXX sTLD are being identified as supporters of ICM, despite an ICM statement “that pre-registrations would not be used as a show of support for .XXX.” Ms. Duke notes a lack of transparency into ICM’s use of this preregistration information to show support for the .XXX, and requests that the ICANN Board to “make sure that pre-registrations are not considered as a component of sponsorship community support for ICM.”

The FSC notes additional transparency concerns with the items posted for public comment, including the cloaking of the names of IFFOR Board members and proposed members of the policy council until a time “after ICM and IFFOR are enabled as content regulators.” FSC calls for the release of the following information to allow for full information on the .XXX sTLD Registry Agreement:

1. The list of the IFFOR Board members;
2. The list of proposed members of the Policy Council;
3. IFFOR’s Business Plan/Financials;
4. Business Plan/Financials Years 1-5 utilizing 125,000 initial Registrations;
5. The list of .XXX sTLD pre-registrants who have been identified to ICANN;

² Eric Shannon also suggested a provision that all revenue from the .XXX sTLD be donated to “charity in support of the victims of the adult industry.” <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00004.html>. According to Mr. Shannon, the removal of Whois proxy protection and the donation of revenue will reduce the appearance that “.xxx is a business opportunity for ICANN.”

6. ICM's Proof of Sponsorship Community Support as submitted to ICANN.

The FSC requested the information above through ICANN's Documentary Information Disclosure Policy, and requested that, upon disclosure, the community have an additional 30 days to review this information and provide public comment. As part of the transparency argument, Ms. Duke raises the issue of how any group should be forced to consent "in advance to unknown regulations to be imposed by unknown people not directly responsible" to the adult entertainment community.

The FSC also noted that ICM is making promises both to the adult community and to those who want to burden sexually oriented expression regarding the policies that will be generated, and ICANN may ultimately be involved in the resulting conflicts.

<http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00088.html>.

The FSC provided two additional submissions to the public comment forum. One was an overview of a petition drive, where it posed the following statements on a questionnaire: (1) "I am a member of the online adult entertainment community and I opposed ICM's application for a .XXX sTLD" and (2) "I have defensively pre-registered .XXX domain names and I oppose .XXX." FSC reports that 201 out of 213 respondents checked approval for the first question, and 56 out of 213 respondents supported the second statements. FSC provided redacted email addresses for each of the 213 respondents, and a preliminary check against the persons submitting comments into the public comment forum did not reveal duplication. See <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00705.html>.

The Free Speech Coalition also submitted a lengthy statement regarding the sponsored community, noting "FSC and the adult community believe that the facts surrounding level of support, or lack thereof, for ICM's proposal within the sponsorship community have been and are being confused or misrepresented." Diane Duke, writing on behalf of the FSC, attached a copy of a discussion thread from XBIZ.net, an adult community discussion board where Stuart Lawley engaged with members of the online adult community on that and other topics related to the .XXX sTLD. <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00704.html>.

ICM, through Stuart Lawley, submitted a response to the FSC's first statement, stating that the questions raised therein have been asked and answered, and should not be "reopened" pursuant to the Board's determination in Brussels to accept the finding of the Independent Review Panel that the Board already determined that ICM met the sponsorship criteria. ICM challenged FSC's position as the "'the' trade association for the global adult entertainment industry" and notes that FSC's has approximately 1,000 members and its activities are directed exclusively towards the U.S. ICM notes that "IFFOR is of a global nature, and to date, ICM has received pre-reservations from over 9,000 members of the Sponsored Community from over 80 different counties." ICM states that the definition of the sponsored community has not changed since ICM submitted its application to ICANN in March 2004 – it has always been self-defining. On the topic of pre-registration service, ICM states that pre-registrations have been "cited numerous times [] as evidence of the sponsored community's desire to register names in .XXX," and provides statistics on pre-registrations identified as "defensive" in the system. Further, the issue of the sponsored community was decided prior to the launch of the pre-registration service. On the IFFOR Policies, ICM notes that the baseline policies are "specif[ied] in detail, and particular the

processes by which additional policies and procedures will be developed.” ICM challenges the suggestion that either ICANN or the public has insufficient information as “patently absurd”. <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00090.html>.

Nick Hentoff of AttorneyWebNet noted his support for the Registry Agreement, and commented that Registry Agreements and registrar agreements should include provisions that domain registrants are third party beneficiaries of those agreements. <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00091.html>.

Jason Hart, President of Northstar Productions LLC and a stated member of the adult online community, echoed concerns raised by others, that there is no need for an organization to represent a “responsible” global online community when such a community already exists through the FSC. Mr. Hart also echoed concerns relating to the transparency of information available on ICM’s application, including the omission of IFFOR Board and policy council member names, and the lack of established “IFFOR Policies and Best Practices” with which the sponsored community will be required to comply. Mr. Hart also called for additional information to be made available prior to the close of the public comment period, to allow for “the appropriate level of feedback to the ICANN Board for it to make an informed decision.” <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00106.html>.

Danny Younger provided an extensive analysis of whether the proposed Registry Agreement is consistent with GAC advice, concluding that it is not. Mr. Younger’s analysis, “predicated on the premise that any GAC commentary referencing the proposed .XXX sTLD [is] GAC Advice,” is broken up into a number of headings, including: (i) controversial strings; (ii) personal names; (iii) country names and geographical identifiers; (iv) historical, cultural and religious names; (v) trade mark rights; (vi) access to illegal and offensive content; (vii) protecting vulnerable members of the community; (viii) maintaining accurate registrations and interaction with law enforcement; (ix) public interest benefits; (x) sponsored community and public interest criteria; (xi) enforceable contract provisions; (xii) ‘opposition to the introduction of .XXX’; (xiii) ‘deficiencies [sic] identified by the sponsorship and community evaluation panel’; and (xiv) ‘GAC advice on new TLDs’. Mr. Younger concludes under many headings that more specific guidance is needed from the GAC or that more specific provisions should be required from ICM. Mr. Younger also notes that after the Board accepted the certain findings of the Independent Review Panel, more outreach to the GAC should have occurred. Mr. Younger specifically notes the absence of information on how ICM’s application serves the global public interest as a whole. Mr. Younger also urges the Board to consider whether the approval of the .XXX sTLD will result in lessening the burdens of government. Mr. Younger’s answer to that question is no – but the GAC should be consulted. <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00144.html>.

A member of the adult community identified as “Tickler” expressed his lack of support for the .XXX sTLD. Tickler provided multiple reasons for objection, including a lack of detail in the .XXX proposal to make informed comments, including the need for domain dispute and resolution procedures to be fleshed out, the sources of members for the IFFOR Board needs to be clarified, as well as more details on the “mandates and financing.” Tickler also questioned the reach of the IFFOR policy, and whether it would reach content on sites in existing TLDs, which sites are reached through redirecting traffic from a .XXX registration. Tickler also noted that the “whole issue with IFFOR has problems”, including the fact that it is created and financed by ICM, not run by the adult industry, deals in very general terms.

proposes a labeling system and is not needed, and that those who have come out in support of ICM are engaging in practices contrary to the IFFOR rules.

Tickler joined others in requesting additional action by ICANN, including:

1. Verify that companies that ICM has listed in support are viable "adult" businesses,
2. Verify that companies listed in support in fact do support ICM's current application for a .XXX TLD,
3. Determine how many pre-registrations claimed by ICM are in fact defensive registrations,
4. Determine how many pre-registrations are registrars or companies hoping to re-sell domain names.

Tickler also provided commentary on the GAC's advice on the .XXX, noting the ability for nations to block the .XXX sTLD through ISP communities, the risks of "inflammatory phrases" in TLDs without input from the true sponsored community. Tickler also discussed concerns with the self-defining nature of the .XXX sTLD sponsored community, and the lack of representation or support from the "REAL" adult community. See:

<http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00292.html>

Allan B. Gelbard, an attorney to many members of the adult entertainment community, wrote to express his personal opposition to the .XXX sTLD. As it relates to provisions in the registry agreement, Mr. Gelbard notes that granting the Registry Agreement and "forcing trademark holders to pay ICM to defensively protect their marks" may constitute contributory trademark infringement under U.S. laws, which could expose ICANN and ICM to litigation, as well as potential antitrust litigation. Mr. Gelbard then reiterates many of the arguments already made during the comment period, regarding ICM's "attempt[] to mislead the ICANN Board as to the level of industry support", specifically in the use of pre-registrations to demonstrate community support, and calls for the disclosure of information requested by other commenters. <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00311.html>.

A commenter identified as Nigel questions whether the approval of the .XXX sTLD Registry Agreement will be in line with ICANN's core values, as it will fail to preserve and enhance the operational stability and global interoperability of the domain name system, and the ignoring of the "international outcry" of adult webmasters will also go against ICANN's core values. <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00313.html>.

Ed Pressman raised the issue that IFFOR appears to be a "pass-through" organization with a "prima facie conflict of interest" with ICM. Mr. Pressman pointed to issues such as ICM selecting the IFFOR Board members, and ICM will be afforded the only permanent Board seat on IFFOR to demonstrate the conflict of interest. Mr. Pressman also raised a concern that "little actual thought has been put into any of the serious governance issues" and questioned why ICANN would hand oversight over such issues to ICM or an organization run by ICM. Mr. Pressman urged ICANN to slow the process for the selection of the governance organization. Mr. Pressman then declared a personal interest due to his work with "an effort to develop an application that will objectively and scientifically deal with many . . . of the major governance issues involved in this matter," and urges ICANN to invite others to provide solutions to the governance issues that will be posed in the .XXX TLD. See: <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00347.html>.

Tom Hymes, an FSC Board member and employee of AVN, writes in his personal capacity in opposition to the .XXX sTLD Registry Agreement. Mr. Hymes states that the sTLD process is flawed “due to its lack of transparency and the unfortunate decision to exclude the sponsor community from any direct role in the application, and also the fact that ICANN’s internal processes for determining the accuracy of claims made by applicants are insufficient, at best.” Mr. Hymes also expresses his hope that the Board will consider the issues raised by the GAC, and not determine those issues to be solved. Mr. Hymes states that ICANN has an active role to take in protecting rights of those at risk of censorship through the approval of this application. <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00702.html>.

The Intellectual Property Constituency (IPC) of ICANN’s Generic Names Supporting Organization (GNSO) provided comment noting the strong commitment to rights protection mechanisms in the .XXX sTLD proposed Registry Policy. The IPC noted that additional “detail and transparency” to allow for implementation and application of the policies, particularly in light of the “uniquely sensitive implications” to rights holders as it relates to the .XXX sTLD. The IPC encourages the inclusion of additional detail, and provides specific questions, including: (1) ability for persons and entities not qualified for registration in the .XXX sTLD to recover names through the UDRP process; (2) proxy service provider restrictions; (3) details on the Charter Eligibility Dispute Resolution Process, Rapid Takedown and Registrant Disqualifications, and “STOP processes; (4) information on the “tie-breaker” mechanism; (5) scope of definition of “trademark holders” with access to discounted registrations; (6) how non-resolving names will be provided to those submitting pre-registration; and (7) definitions of “culturally significant names” or “country and geographic designators reserved list” and how they relate to trademark rights. <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00718.html>.

Some commenters provided suggestions for the operation of the .XXX sTLD – and potential items for inclusion within a Registry Agreement – without expressing support for or opposition to the Registry Agreement as currently proposed.

For example, Markus Grob suggests that the .XXX Registry Agreement should require registrations of subdomains based on existing TLDs, and not allow registrations directly at the second level. Mr. Grob also suggested that adult content should be migrated to the .XXX sTLD and off of the existing TLDs for “eas[e of] filtering for children.” See: <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00006.html>

Mark Randazza, while “agnostic” on the sTLD, notes that the introduction of the certain measures might “push [him] over the fence to supporting this proposal.” These measures include: (1) forbidding “passive holding” of domain names, and requiring use (not including “pay per click” sites); (2) “high value non-branded” domains are not available for general registration, and the Registry Operator may sell ad space on these domains; (3) creation of an arbitration process allowing for (i) quick takedown of sites and (ii) “blacklisting” of domains; (3) allowing existing adult sites to specify “unregisterable” status of protected names in the .XXX sTLD for payment of a nominal fee; (4) banning of content with underage or unwilling models; (5) a higher registration fee, with \$50 going towards a legal defense fund to fight obscenity prosecution; and (6) creation of “repeat infringer policies” to take down web hosting domains with infringing content. See <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00097.html>

OVERALL ANALYSIS OF COMMENTS

As with the prior comment period relating to ICM's application, many of the public comment submissions either did not address the documents posted for public comment, or the submissions focused on similar issues within those documents. Well over 50% of the submissions were based on common templates or campaigns. Some commenters provided helpful suggestions on ways that the Registry Agreement could be made more precise, and some pointed out information that the ICANN Board may wish to consider when considering a proposed Registry Agreement. While the public comment period was not seeking a community vote on whether to proceed with the .XXX sTLD, ICANN received nearly evenly divided commentary.

I. Comments in favor of the .XXX Registry Agreement

Over half of the commenters³ supported ICANN entering the .XXX Registry Agreement. Only one major trend of those comments relates to the substance of the posted documents: *"The delegated policy making authority, in conjunction with the not-for profit IFFOR, is clearly articulated in the posted documents and allows for multi-stakeholder input whilst at the same time adhering firmly to its charter."*

The other top reasons provided in support of entering the .XXX Registry Agreement and allowing registrations to begin were:

- The .XXX sTLD will provide a mechanism to filter adult-oriented content and protect kids;
- Registrations should begin, to allow for market forces to determine the need for the .XXX sTLD; and
- ICANN should abide by the decision of the Independent Review Panel and end the process surrounding ICM's application.

Within the comments in support of the .XXX Registry Agreement, over 90% of those submissions were made through common template or campaign submissions, set forth in Appendix A below. Nearly 60% of the commenters in support of the Registry Agreement claimed to be affiliated with the sponsored community to be served by the .XXX sTLD.

II. Comments in Opposition to the .XXX Registry Agreement or the .XXX sTLD

The comments received in opposition to the .XXX Registry Agreement also revealed major trends supporting the opposition:

A. Requests for More Information

As set out in the individual summaries, FSC called for two types of information: (1) for ICANN to verify information as it relates to pre-registrations in the .XXX sTLD; (2) for disclosure of information previously redacted by ICM or withheld as confidential, including the identities of the IFFOR Board members and the IFFOR Policy Council. This call for more information, accompanied by a request for an extension of the public comment period, was echoed in many common template and freeform submissions.

³ Or nearly two-thirds of all commenters, if FSC's report of 213 survey recipients is not counted.

Many commenters also repeated concerns regarding the fact that the policies that registrants in the .XXX sTLD will have to agree to – policies to be formed through the IFFOR – have not yet been formed or identified.

B. *Requests for Clarification of Policies*

Separate from the argument that Policies are not well defined, there were calls for clarification of ICM’s registration policies, particularly in relationship to trademark protections.

C. *Additional Registry Agreement Related issues cited in opposition*

- Registry Agreement is inconsistent with GAC advice;
- The Registration Fee is too high and will impose high costs on small business owners;
- Adult content is not well defined, and could result in over classification of content into the .XXX sTLD, of particular concern if governments move to mandate content into the .XXX sTLD;
- The Sponsored Community is improperly defined and/or does not actually support the creation of the .XXX sTLD; and
- ICM misrepresented to ICANN the scope of support from the sponsored community.

D. *Non-Registry Agreement Related issues cited in opposition*

Many commenters supported objection to the .XXX Registry Agreement on more general issues not directly related to the content of the Registry Agreement or the Due Diligence Material. The major reasons cited include:

- A lack of support from the general internet community;
- No proof of a demand for the establishment of the .XXX sTLD;
- The creation of the .XXX sTLD will not solve issues relating to kids’ ability to access adult material – create a .KIDS instead;
- Content tagging already exists and the .XXX sTLD will not add further benefit;
- The risk of forced content migration to the .XXX sTLD through legislation, and the risk of censorship;
- The only party to benefit will be ICM; and
- ICANN will become involved in content discrimination through opening the .XXX sTLD.

All of these issues have been raised before in earlier public comments.

III. Sponsored Community Definition Issues

Many of those commenting in opposition to the .XXX Registry Agreement raised concerns regarding the sufficiency of the definition of the Sponsored Community. The issue of the sufficiency of the sponsored community comprised a large part of the issues considered by the Independent Review Panel in its February 2010 Declaration.

As seen in Mr. Kirikos' and the FSC comments, among others, there is a concern that the definition of the sponsored community, comprised of providers "who have voluntarily determined that a system of self-identification would be beneficial and have voluntarily agreed to comply with all [IFFOR] Policies", is too self-defining and is not capable of being objectively determined. Moreover the FSC and its supporters argue that though they are adult entertainment providers who are the likely registrants within the .XXX sTLD, that they are not truly members of the sponsored community because they do not agree to be bound to undetermined policies. Further, they argue, FSC's Code of Ethics already provide for such self-regulation. ICM responded to these arguments, noting the IRP's decision as accepted by the Board, and further noting that the self-defining nature of the sponsored community has been in place in prior agreements.

Another aspect of challenge to the sponsored community definition and measured support has to do with ICM's alleged use of the pre-registration lists to identify community support for the .XXX sTLD. Commenters cited a 2007 statement by ICM that certain pre-registrations would not be used to demonstrate the support of the sponsored community, and request confirmation from ICANN and ICM that pre-registrations are not being used in that fashion. Many commenters noted that they preregistered domain names in the .XXX sTLD to protect their own business interests, but that pre-registration does not equate to support for the .XXX sTLD, and they in fact do not support the creation of the .XXX sTLD. <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00341.html>; see also <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00143.html> (also noting that the industry has a means for self identification of sites for labeling).

Within the public comment process, there have been calls for ICANN to identify and determine who is a member of the sponsored community or adult entertainment stakeholders, and who is not. See, e.g., <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00262.html>. ICANN has not attempted to verify the identity or affiliation of any person submitting public comment to the ICM forum, whether the person was in support of or opposed to the .XXX sTLD Registry Agreement. Further, ICANN has not attempted to verify the industry association or status of registrations within the ICM pre-registration information provided to ICANN.

Because of the prevalence of self-identification as a member of the Sponsored Community or as a member of the Adult Industry, ICANN provides some estimated numbers of how those members self-identifying compared to the overall contributions to the public comment forum.⁴

⁴ This chart provides an estimate of the overall comments received. Due to requests for removal from the comment thread, identified duplication and spam, there is some imprecision in the exact totals, but not to a statistically significant degree. The columns "w/FSC" reflect FSC's report on the 213 survey responses regarding the .XXX Registry Agreement. ICANN performed a spot-check and did not observe duplication between FSC's self-reported survey and those who commented directly to ICANN. For completeness, ICANN staff also reports totals without FSC's survey results.

Position	Submissions Received		Percentage of Submissions		Webform/Standard Form Submissions		Self Identified Adult Industry	
	w/FSC	w/o FSC	w/FSC	w/o FSC	w/FSC	w/o FSC	w/FSC	w/o FSC
Support Registry Agreement	455	455	50%	65%	448	448	333	333
Do not Support Registry Agreement OR No XXX	434	231	48%	33%	304	111	349	146
Neutral	7	7	1%	1%	0	0	0	0

IV. Extension of Public Comment

Regarding the call for the extension of the public comment period, that request was not granted. The extension was requested for an additional 30 days past the release of information provided in response to the FSC's request submitted under ICANN's Documentary Information Disclosure Policy (DIDP). The DIDP request did not result in the release of any additional information, as whatever information ICANN had that was responsive to the request was designated as confidential by ICM. ICANN requested that ICM release the confidential designation, and ICM denied ICANN's request.

NEXT STEPS

This summary will be presented to the ICANN Board for consideration at the 28 October 2010 Board meeting.

CONTRIBUTORS

Due to the large volume of postings, a listing of individual contributors will not be included in this report. Each of the contributors can be viewed via their public comments posted at <http://forum.icann.org/lists/xxx-revised-icm-agreement>

APPENDIX A – LISTING OF CAMPAIGN/TEMPLATE RESPONSES RECEIVED

Consistent with previous public comment periods in relation to ICM’s application for the .XXX sTLD, various public comments were observed to be completely or partially adopting the form of template text submissions originating from various external campaigns.

The more commonly observed template responses that were received by the public forum have been outlined:

V. Common Templates in Support of Entering Registry Agreement:

A. *“Please Approve the .XXX Registry Agreement” postings*

ICM Registry created three variations of common template submissions. According to ICM, in a report on the email newsletter campaign, ICM sent emails to its subscribed database of pre-registrants and registered identified supporters. The email contained a click-through option, where a the user could click to post a comment, and a comments would be submitted to ICANN’s public comment forum. ICM’s report is available at <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00696.html>.

As detailed in ICM’s report, over 400 postings were received through ICM’s efforts.⁵ There was a “Long Form” posting, as well as two shorter postings – one including a statement that the submitter is a member of the sponsored community, and urging approval of the .XXX Registry Agreement, and a second with a short statement urging approval of the .XXX Registry Agreement without any identification of affiliation. The “Long Form” statement topically addresses some of the substance within the Registry Agreement raised in other comments, including a statement that the delegated policy making authority is “clearly articulated in the posted documents.” The shorter form comments do not address substantive issues within the posted documents. Most of the comments received through ICM’s thread contain a common subject line “Please Approve the .XXX Registry Agreement.”

1. Long Form:

Subject: Please approve the .XXX Registry Agreement

Dear ICANN,

Please approve the Registry Agreement for the dot-xxx top-level domain in the form posted on your website.

I believe that the labelling of adult content online is a good and useful step forward.

⁵ The 22 September and 23 September 2010 comment threads show nearly 300 entries related to ICM’s campaign, entries that were posted in bulk within a very short period of time on 23 September 2010. The comments were received by ICANN in “real” time, as noted in the date and time stamp of the submission header, but a system limitation required them to be posted in bulk.

The company behind dot-xxx, ICM Registry has spent many years trying to make the extension a reality, and has given considerable thought into how a self-regulated adult area online would work.

The delegated policy making authority, in conjunction with the not-for profit IFFOR, is clearly articulated in the posted documents and allows for multi-stakeholder input whilst at the same time adhering firmly to its charter.

I urge you to execute the Registry Agreement as soon as possible and so let the registration of .XXX names begin.

2. Short form variants:

(a) Commenter self identifying with sponsored community:

Subject: Please approve the .XXX Registry Agreement

Dear ICANN,

As a member of the Sponsored Community for the dot-xxx top-level domain I urge you to execute the Registry Agreement as soon as possible and let registration of .XXX names begin.

(b) Commenter not identifying with sponsored community but in favor of .XXX sTLD:

Subject: Please approve the .XXX Registry Agreement

Dear ICANN,

I urge you to execute the Registry Agreement with ICM Registry as soon as possible and so let the registration of .XXX names begin.

Some comments within the public comment forum addressed ICM's campaign submissions. ICM reported that it received three complains from those claiming to have clicked the link in error. ICANN also received complaints directly from persons who posted through ICM's email links, noting that they did not mean to consent to a public posting. ICANN removed three such postings. In addition, there were other comments received suggesting that postings through ICM's links – many titled "Please approve the .XXX Registry Agreement" and from members of the sponsored community – are not actually from people working in the adult entertainment industry. See <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00092.html>; <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00285.html>; <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00697.html>; <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00700.html>; <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00713.html>.

VI. Common Templates In Opposition to Proposed Registry Agreement or the .XXX sTLD

A. *Request for Documentation posting*

There were approximately 15 submissions provided by persons identified as members of the sponsored community for the .XXX sTLD to request ICANN's verification of information submitted by ICM and requesting the release of additional information as requested by the FSC. Each person requesting information in this form noted that they do not support the application for the .XXX sTLD. The text included in this form submission mirrors the requests made by the FSC at <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00088.html>, summarized above. Some commenters modified the list or scope of information requested, but the common template language was substantially similar to the following text:

Dear ICANN,

I am a member of the .XXX sTLD sponsored community. I do not support ICM's application for the .XXX sTLD.

I request that ICANN does the following:

- 1. Verify that companies which ICM has listed in support are viable adult businesses,*
- 2. Verify that companies listed in support in fact do support ICM's current application for a .XXX sTLD,*
- 3. Determine how many pre-registrations claimed by ICM are in fact defensive registrations,*
- 4. Determine how many pre-registrations are registrars or companies hoping to re-sell domain names.*

Additionally, I also request the following information also be released as requested in the DIDP from the FSC:

- 1. The list of the IFFOR Board members;*
- 2. The list of proposed members of the Policy Council;*
- 3. IFFOR's Business Plan/Financials;*
- 4. Business Plan/Financials Years 1-5 utilizing 125,000 Initial Registrations;*
- 5. The list of .XXX sTLD pre-registrants who have been identified to ICANN;*
- 6. ICM's Proof of Sponsorship Community Support as submitted to ICANN.*

B. “Do Not Approve .XXX” posting.

The following form comment appears to be generated through a campaign run from the techyum.com website: <http://techyum.com/2010/08/comment-period-now-open-on-xxx-make-your-voice-heard/#more-1565>. Over 40 submissions contained nearly identical text to this submission.

Subject: Do Not Approve .XXX

Dear ICANN,

This email is a comment in opposition to the Proposed Registry Agreement for the .XXX sTLD by ICM Registry. The .XXX sTLD should be rejected in finality for the following reasons:

** The .xxx TLD is opposed by every sector and community it affects. This includes people working in the adult entertainment industry (including Hustler, Vivid, Penthouse, porn’s Free Speech Coalition, and Adult Friend Finder), anti-porn family and religious organizations (including The Family Research Council), thought leaders in the technology sector, and the ACLU.*

** Despite ICM’s constant assurances of various industry representation and support, there is no evidence of community support for .XXX.*

** The .xxx TLD will do nothing to solve problems surrounding adult content, manage adult content or protect children from inappropriate content. The higher purposes of ICM’s proposal have been abandoned. (As of this email the page on ICM Registry’s website about “Promoting Online Responsibility” for .XXX is blank and reads “*Information to follow*” as does the page titled “Contracts, Policies and Bylaws.”)*

** There has been absolutely no proof of an “unmet need” for the .XXX TLD.*

** There is no concrete, agreed-upon definition of “adult content.”*

** The ACLU expresses serious concerns about the implications of .XXX outside the U.S., where in some countries, regulations around .XXX would certainly be enforced punitively. To this effect, the .XXX TLD raises human rights concerns.*

** .XXX makes no business sense except to profit from defensive registration (brand squatting).*

** Senators Max Baucus (D-MT) and Mark Pryor (D-AR) have introduced legislation to make the use of .XXX compulsory for all web sites that are “harmful to minors.”*

** .XXX raises serious issues around spurious and unsupported TLD’s in regard to the impact of ICANN on rulings on civil and human rights, and ICANN’s role in content-based discrimination.*

In light of the above, I object to .XXX and urge ICANN to reject .XXX.

C. "I run adult websites and I do NOT want the .xxx tld" Posting

Nearly 50 comments were received containing a very short statement in opposition to the .XXX sTLD. The comments were submitted under a variety of headings. The comments read:

Subject: I run adult websites and I do NOT want the .xxx tld!

I run adult websites and I do NOT want the .xxx tld!

D. Industry Self-Regulation posting

A couple of postings that did not address the substance of the Registry Agreement or the due diligence documentation were nearly identical in form, stating:

I am completely against .xxx. Our industry has self-regulated itself from day one and to be perfectly honest, I think we have done a brilliant job. ICM's argument is ridiculous at best. More viruses are found in mainstream than on any adult website. Online stores such as Amazon.com and many other retail / service outlets have chargebacks much higher than most of our industry. As a site owner, the only place I see fraud is from the consumer. As for "the children", any responsible owner has ratings and codes in place on their site. All we need are the parents to tun their browser settings on.

No matter what the banks, regulators and government have thrown our way over the years, we have always stepped up to the plate and come into compliance. .XXX is not going to help anyone: all it will achieve is to ghettoize adult sites and leave us vulnerable to censorship. It will compromise privacy policies, content creativity, hinder free speech, and take away our choices.

ICM does not care one iota about our industry, to them this is just a money making opportunity, that will end with the small independent webmaster going out of business and create overall hardship within the industry itself.

I have been in the industry, as a business owner, for the last 15 years. I know hundreds of adult webmasters and none of them are in favor of .XXX

E. Community Already Represented posting

A couple of identical posts were made by self-identified members of the adult online community expressing the opinion that the community that ICM seeks to have represented in the .XXX sTLD is already established through adherence to the FSC Code of Ethics. The postings read:

Opposition To ICM's Proposed .XXX sTLD

Gentlemen:

Please consider these comments in opposition to ICM's Proposed .XXX sTLD. I am a professional member of the adult online community, the part most impacted by the ICANN Board's decision. My company, [], the registered owner of [*] will be adversely affected if the ICM proposal is accepted. In this recessed economy, we, like many other companies, are struggling to keep our doors open. We do not need the added cost of registering another domain name, at grossly inflated charges, in an attempt to remain competitive. It is very clear by their actions that ICM is attempting to force the adult online community to subscribe to their domain, not in the interest of any entity, but themselves.*

ICM is pushing unnecessarily for a "responsible" global online community when the adult entertainment community already has an entity through which Internet publishers and others can self-identify as a responsible global online adult entertainment community through the Free Speech Coalition and its Code of Ethics. We do not need, nor do we desire, any similar Code to be established for us by a third-party profit making institution.

In summary, ICM's Proposal is a self-serving solution to a problem that does not exist.

Thank you for your consideration.

F. *View Industry Movie posting*

At least four comments followed all or part of the following common template inviting ICANN to view a movie created by the adult entertainment industry regarding issues "created" by the .XXX sTLD. The common language reads:

Please Do Not Approve .XXX

To Whom It May Concern,

First, let me state my complete and total opposition to .XXX and ICM Registry. It is a sham, a land grab, and is NOT supported by the adult entertainment industry. I have been in the online adult industry since [], have followed this debacle from day one, and can honestly say that it is of no value to the adult industry, but rather comes with so many negative ramifications that it will harm the industry that it purports to assist.*

I will keep it brief here, and simply ask all ICANN and other interested parties to view a short film that was created by leaders in the adult entertainment industry in August which shows, through satire, the many disastrous issues that .XXX creates. Appearing in the film are Larry Flynt (Huster CEO), Allison Vivas (PinkVisual CEO), John Stagliano (Evil Angel CEO), Ron Cadwell (CCBill CEO), Peter Acworth (Kink CEO), Mitch Farber (Netbilling CEO), and a host of other adult industry leaders. The film was written by longtime industry advocate and writer Theresa "Darklady" Reed and directed/produced by Wasteland CEO Colin Rowntree.

Please view the film at <http://dotxxxopposition.com/>

Again I am completely opposed to .XXX.