



9 September 2010

Mr. Peter Dengate-Thrush, Chair  
Members of the Board of Directors  
Internet Corporation for Assigned Names and Numbers  
4676 Admiralty Way, Suite 330  
Marina del Rey, California 90292

Re: Response to Free Speech Coalition's Letter of 8 Sept. 2010

Dear Peter and Members of the ICANN Board:

I am writing in response to the comments made by the Free Speech Coalition ("FSC") dated 8 September 2010, which contain a variety of erroneous statements and repeated accusations that have been debated and refuted several times in the past seven years.

First, the FSC letter addresses questions that have been long asked and answered. The Board decided these issues should not be reopened when it determined in Brussels to accept the finding of the IRP Majority that ICM's application had been approved by the Board as meeting the sponsorship criteria.

Second, while the Free Speech Coalition is respected as a tireless supporter of First Amendment rights in the United States, it is not and has never been "the" trade association for the global adult entertainment industry. The Board is well aware of this, as it was a topic of discussion between Dr. Twomey and Ms. Duke in the public forum in Lisbon in 2007. In fact, the organization describes itself as follows:

The Free Speech Coalition is a California trade association that assists film makers, producers, distributors, wholesalers, retailers, and Internet providers located throughout the United States in the exercise of their First Amendment rights and in defense of those rights against censorship. Free Speech represents more than six hundred businesses and individuals involved in the production, distribution, sale, and presentation of non-obscene, adult oriented materials. (Brief for Respondents at p. 9 n. 7, *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002) (No. 00-795) (2000 U.S. Briefs 795 (July 2, 2001))).

The FSC does not disclose information about its members, but some facts are known. The FSC reported that it had approximately 600 members in 2001. In December of 2003, at the same time ICANN published the new sTLD RFP, FSC representatives reported that the organization had between 350-400 members. (Clay Calvert & Robert Richards, *On the Free Speech Coalition &*

*Adult Entertainment: An Inside View of the Adult Entertainment Industry, Its Leading Advocate & the First Amendment*, 22 CARDOZO ARTS & ENT. L.J. 247, 260 (2004)). We understand that the FSC currently has approximately 1,000 members. We further understand that both its leadership and its members are almost exclusively U.S.-based. Its self-described focus is the First Amendment to the Constitution of the United States, and, according to its web site, the FSC's legislative activities are directed exclusively at U.S. state and federal bodies.

By way of contrast, 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 countries.

Third, the definition of the sponsored community for the .XXX sTLD has not changed in the nearly seven years since ICM submitted its application in March 2004. In that application and in all subsequent materials, the sponsored community for .XXX has been consistently defined as online adult entertainment providers and service providers who have voluntarily determined that a system of self-identification would be beneficial and who have come together to develop and to comply with industry best practices. The definition of the sponsored community was discussed thoroughly in the course of ICANN's review of ICM's application, and was clearly articulated as those online adult entertainment webmasters and their service providers who believed that they would benefit from clear self-identification and the application of industry best practices developed with input from other stakeholders. The very first contract posted by ICANN on 9 August 2005 likewise described the sponsored community as sites operated by webmasters who have determined that a system of self-identification would be beneficial and who want to register a name in .XXX subject to the best practice rules to be developed by IFFOR. The FSC may have realized only recently that the sponsored community for .XXX is self-defining, but that fact is not new and does not constitute a change in the definition of the sponsored community.

Fourth, the materials posted specify the IFFOR Baseline Policies in detail, and articulate the processes by which additional policies and procedures will be developed by its Policy Council that includes elected representatives of the sponsored community and that contain extensive protections for minority interests (e.g., supermajority requirements, etc.). These materials reflect carefully considered and fully vetted processes to ensure that ICM Registry lives up to its commitments to the sponsored community, to advocates of free expression, child protection and privacy, to ICANN, and to the Internet community as a whole.

Fifth, ICM's pre-reservation service was launched in May of 2006, and was cited numerous times thereafter as evidence of the sponsored community's desire to register names in .XXX. The assertion that webmasters were tricked into pre-reserving names by promises of any kind is completely unfounded. The pre-reservation service permits registrants to identify any names submitted as "defensive registrations". As of this writing, only 6,435 out of a total of 179,630 names submitted have been identified as defensive, which includes defensive registrations by individuals and entities who are not members of the sponsored community. Moreover, ICM has published a detailed policy designed to address abusive registrations, which provides greater protections than any other TLD in existence, or than would be required of any new TLD under the DAG IV requirements for new gTLDs.

Sixth, the issue of sponsorship is not now on the table, and under the IRP decision, accepted by the Board in Brussels, should not have been on the table at any time since June of 2005—approximately one year before the pre-reservation service was launched.

Finally, the notion that either ICANN or the public has insufficient information regarding the .XXX sTLD, ICM Registry, or IFFOR is patently absurd. Voluminous and detailed information has been made available to the public in the course of ICANN's consideration of the sTLD. Far more information, and far more detailed information, has been provided and made public than was the case with any other sTLD applicant in the 2004 round.

The bottom line is that the FSC's comments simply restate the arguments they have made in the past. Their claims were inaccurate, unsupportable, untimely, and irrelevant when first made, and remain so today.

Sincerely,



Stuart Lawley  
CEO & Chairman of the Board

cc: John Jeffrey, Esq.