

**REFERENCE MATERIALS – NGPC PAPER NO. 2014.06.21.2a**

**TITLE: Options for Consideration of GAC Category 2 Safeguard advice in the Beijing Communiqué**

<b>A - Prohibit Exclusive Generic TLDs</b>		<b>B - Reject GAC Advice Permit Exclusive Generic TLDs</b>		<b>C - Ask GAC for Clarification</b>		<b>D - Accept GAC Advice Implement Advice by Requesting Voluntary PIC</b>	
<b>Pro</b>	<b>Con</b>	<b>Pro</b>	<b>Con</b>	<b>Pro</b>	<b>Con</b>	<b>Pro</b>	<b>Con</b>
Will satisfy community members that think ICANN should prohibit Exclusive Generic TLDs	Inconsistent with GNSO position	Consistent with GNSO position	Will dissatisfy community members that think ICANN should prohibit Exclusive Generic TLDs	Increases likelihood that implementation is aligned with GAC intentions	GAC may not be able to provide additional clarity to assist implementation	Consistent with treatment of other GAC Advice	Will dissatisfy community members that think ICANN should prohibit Exclusive Generic TLDs
Simple	Inconsistent with AGB	Consistent with AGB	May lead existing registry operators to ask for contract amendment to be Exclusive Generic	Seeks implementation direction from source of advice	May be seen as unreasonable delay at this juncture	Publication of PICs provides an opportunity for the community to offer feedback on the proposed PICs	May lead existing registry operators to ask for contract amendment to be Exclusive Generic
	Arguably inconsistent with GAC Advice; may require GAC consultation	Consistent with view that ICANN should adhere to its remit and not regulate business models	Will require GAC consultation	Provides NGPC with understanding of GAC intentions and rationale		PICs become contractually binding obligation in the Registry Agreement	Enforcement of PICs may extend ICANN beyond remit

## REFERENCE MATERIALS - NGPCPAPER NO. 2014.06.21.2b

**TITLE: Comparison of safeguards in Sponsored TLD Registry Agreement for .XXX to standard safeguards in the new gTLD Registry Agreement**

The precise language and implementation of various safeguards differ somewhat, but in general the substance of the many of the safeguards that were included in the Sponsored TLD Registry Agreement for .XXX are similar to safeguards that are now standard in the new gTLD Registry Agreement and therefore apply to all new gTLD Registry Operators. These include:

Mechanisms to give trademark owners priority in registering trademarks in the TLD and notices of claims;

Expedited dispute resolution to address trademark infringement and cybersquatting;

Mechanisms through which the community can report abusive activities such as malware, phishing, spam, abusive registrations, IP infringement and other malicious conduct;

Requirements that the Registry Operator periodically assess whether websites in the TLD are engaged in certain abusive activities;

Mandatory reservation of specified SLDs such as country codes and certain geopolitical identifiers;

Mandatory publication of registration policies for the TLD;

Mandatory verification/validation of registrant information; and

Compliance with WHOIS requirements.

The most significant differences between the contractual safeguard requirements for .XXX under the Sponsored TLD Registry Agreement and those that would apply to .ADULT, .PORN and .SEX under the new gTLD Registry Agreement are:

Registrants in .XXX are required to establish membership in a defined Adult Entertainment Industry;\* and

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\* With respect to the .XXX requirement to establish membership in a defined Adult Entertainment Industry, ICM Registry, LLC ("ICM") was clear in its applications for .ADULT, .PORN and .SEX that it did not intend for these requirements to apply to these new gTLDs. ICM did not submit its applications for new gTLDs as

Registrants in .XXX are required to comply with International Foundation for Online Responsibility (IFFOR) Policies and best practices.<sup>†</sup>

Although IFFOR policies and best practices overlap to a significant extent with new gTLD safeguards (addressing matters such as requiring reporting mechanisms for a variety of abusive activities, including phishing, spam, abusive registrations, IP infringement and other malicious conduct), IFFOR policies also address certain specific matters not explicitly addressed in the new gTLD Registry Agreement.

In particular IFFOR policies and best practices specifically prohibit child abuse images and content or conduct designed to suggest the presence of child abuse images, and require that reports of child abuse images be automatically forwarded to a child safety hotline. IFFOR defines child abuse images as “any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, depicting child sexual abuse as stated in the United Nations Convention on the Rights of the Child.”

To some extent the new gTLD Registry Agreement addresses these issues indirectly, for example, by requiring that registrants be prohibited from engaging in illegal activity contrary to applicable law and requiring Registry Operators to take reasonable steps to investigate and respond to reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. However,

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community new gTLD applications, and it is unclear whether they would have passed community evaluation if they had been submitted as community applications.

<sup>†</sup> With respect to both the .XXX requirement requirement to comply with IFFOR policies and best practices, ICM was open and direct in its applications for .ADULT, .PORN and .SEX that it did not intend for these requirements to apply to these new gTLDs.

ICM declared in its applications that there are members of the adult entertainment industry:

“who chose not to, or were unable to, participate in .XXX, whether on the basis of price, inability to satisfy the sTLD membership criteria, or a general unwillingness to adopt or implement the policies promulgated by IFFOR. ICM learned that these constituencies within the AEI maintain a philosophical skepticism about, or an outright rejection of, granting a third party organization, i.e. IFFOR, the authority to create TLD policies that they perceive as potentially interfering with their own business policies and practices.”

ICM also noted that:

“policies such as daily malware scanning and automated family safety tagging, as well as the other benefits that accrue to .XXX registrants and consumers as a result of IFFOR’s polices, are impossible to replicate in a lower cost new gTLD.”

the New gTLD Registry Agreement does not explicitly prohibit specific categories of content per se, which the IFFOR policies specifically do with respect to child abuse images.

IFFOR policies also specifically require registrants to consent to automated scanning of their sites to detect abusive activities, and require that registrants agree not to employ technological or other means to defeat or prevent such scanning. The new gTLD Registry Agreement requires Registry Operators periodically to conduct a technical analysis to assess whether domains in the TLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets, but does not explicitly require that registrants agree not to employ technological or other means to defeat or prevent scanning.

Thus, there is substantial overlap between many of the safeguards that were included in the Sponsored TLD Registry Agreement for .XXX and the standard safeguards in the new gTLD Registry Agreement, but a few specific safeguards in the Sponsored TLD Registry Agreement for .XXX are not embodied in the new gTLD Registry Agreement.

## REFERENCE MATERIALS - NGPCPAPER NO. 2014.06.21.2b

**TITLE:** ICM Analysis of safeguards in .XXX Agreement

The following is an email correspondence from ICM Registry's General Counsel to ICANN comparing the Safeguards in the .XXX Registry Agreement to the safeguards in the New gTLD Registry Agreement.

**From:** Sheri Falco  
**Date:** Wednesday, June 4, 2014 at 2:54 PM  
**To:** Cyrus Namazi <[cyrus.namazi@icann.org](mailto:cyrus.namazi@icann.org)>  
**Cc:** Stuart Lawley  
**Subject:** Reaching out - Cyrus Namazi - ICANN and ICM

Dear Cyrus,

Following up from our telephone conversation on Monday, June 2, 2014, below please find an easy reference to the safeguards in the .XXX Agreement. It is likely that the New gTLD Program Committee (NPGC), and perhaps even the GAC itself at this point, do not have precise knowledge of the safeguards established in the .XXX Agreement and are not aware of how those exact safeguards are already expressly built into the obligations required of all new gTLDs. We wanted to take this opportunity to provide your team with information about the .XXX Agreement, as well as our intended plans for the .PORN and .ADULT TLDs, in the event questions arise.

As seasoned registry operators we are keenly aware of ICANN's process-driven approach. We have diligently participated in and observed the new gTLD program developments. We took particular note of ICANN's Independent Objector's Comments, the GAC's Early Warning process, and the GAC's Beijing Communiqué and, because no obstructions regarding our new gTLDs were raised during these designated and established opportunities for stakeholder input, we remain assured about the progress of our applied-for-TLDs through the ICANN contracting and delegation phases.

Moreover, in light of the new gTLD program's existing rules and obligations, including the GAC's Safeguard advice and the NPGC's acceptance of that advice, we believe that additional, voluntary Public Interest Commitments (PICs) are not necessary or advisable for the .PORN, .ADULT, or .SEX TLDs because we are already required to provide effective safeguards pursuant to the existing new gTLD program. In all candor, voluntary PICs that incorporate .XXX safeguards into .PORN, .ADULT and .SEX would be redundant and unnecessary because such safeguards are inherently and expressly required for all new gTLDs, including the .SEXY and .WEBCAM TLDs that launched without such voluntary PICs and were specifically promoted to the adult entertainment industry.

As a thought leading sponsored TLD, .XXX pioneered a variety of safeguards that we believe have positively and directly influenced the new gTLD program. Pursuant to ICANN's multi-stakeholder process, the safeguards pioneered by .XXX have been standardized and applied to all new gTLDs including .PORN, .ADULT and .SEX.

Please note the specific .XXX safeguards required for all new gTLDs:

**Reservation of Sensitive Names:**

Prior to the launch of .XXX, we were required to reserve geographical, geopolitical and culturally sensitive names from registration in .XXX.

Under the new gTLD program, all registry operators are required to reserve the following ICANN-mandated names: <https://www.icann.org/sites/default/files/packages/reserved-names/ReservedNames.xml>.

**Registrant Verification:**

.XXX is required to verify registrant information by requiring an affirmative response to the email address provided during registration, prior to the addition of any .XXX name in the .XXX zone file.

Under the new gTLD program and pursuant to the 2013 Registrar Accreditation Agreement Whois Accuracy Program, all registrars selling new gTLDs are required to verify registrant email addresses by requiring an affirmative response to the email addresses provided during registration or by verifying the telephone numbers provided during registration.

**Sunrise Trademark Protection:**

.XXX offered a unique Sunrise B program allowing trademark owners to protect their marks in .XXX and to receive notifications when third parties applied to register their trademarked names during the .XXX Sunrise Period.

Under the new gTLD program, all registry operators and registrars are required to participate in the ICANN-established Rights Protection Mechanisms, including the Trademark Clearinghouse (TMCH) Sunrise and Claims services.

**Rapid Takedown - Trademark Infringement & Cybersquatting:**

.XXX offers a Rapid Evaluation Service (RES) dispute resolution for trademark owners in the event their marks are registered in .XXX in bad faith; this service provides trademark owners a cost-effective, expedient remedy against cyber-squatting.

Under the new gTLD program, all registry operators and registrars are required to participate in the ICANN-established Uniform Rapid Suspension System (URS).

**Illegal Activity - Child Abuse Content, Abusive Registrations, Malware and Other Types of Malicious Activity:**

.XXX is required to maintain a web-based system for reporting non-compliant registrations or registrations that operate in a manner that violate our agreements and policies, i.e., a

Compliance Reporting System (CRS) that allows Internet stakeholders to contact .XXX directly to report instances of illegal activity, including without limitation child abuse images, trademark infringement, malware, phishing, etc. .XXX is obligated to maintain statistical reports of the number of abuse reports we receive and the actions taken as a result of those reports. Pursuant to our obligations as a sponsored TLD, the .XXX CRS was audited quarterly during the first year of operation and continues to be audited annually each year thereafter by our Sponsoring Organization's (IFFOR) Ombudsman. In the .XXX registration agreement and policies, we have the right to suspend or disqualify .XXX registrations in the event they violate our terms and policies.

Under the new gTLD program:

All new gTLD operators are required to include in their Registration Agreements a provision prohibiting Registered Name Holders from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.

All new Registry Operators are required to periodically conduct a technical analysis to assess whether domains in the TLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. Registry Operators are required to maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks and to maintain these reports for the term of the Agreement unless a shorter period is required by law or approved by ICANN, and provide them to ICANN upon request.

All new gTLD Registry Operators are required to provide ICANN, and publish on its website, accurate contact details for handling inquiries related to malicious conduct in the TLD.

Pursuant to the 2013 Registrar Accreditation Agreement, all registrars selling new gTLD names must also maintain an abuse contact to receive reports of abuse, including reports of illegal activity. Registrars must also maintain a dedicated abuse point of contact, including a dedicated email address and telephone number that is monitored 24 hours a day, seven days a week, to receive reports of illegal activity by law enforcement, consumer protection, quasi-governmental or other similar authorities and these reports must be reviewed within 24 hours by an individual who is empowered by the registrar to take necessary and appropriate actions; these reports must be documented and the records must be maintained. ICANN has the right to request these records from the registrar.

### **Registration Policies:**

.XXX is required to publish registrant criteria and policies for .XXX registrants.

Under the new gTLD program, Registry Operators are required to operate their TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies.

ICM Registry remains committed to maintaining our excellent reputation as good corporate citizens and wholeheartedly embraces the responsible business practices developed throughout the new gTLD multi-stakeholder process. As you will see in the forthcoming .PORN and .ADULT registrant agreements and policies that we will submit as a part of our TLD Start Up

Information, we will enforce the established new gTLD safeguards in each of the TLDs we are awarded.

Having had a painfully long, contentious and expensive path regarding the .XXX TLD because of ICANN's deviation from its established rules and procedures, we are eager to ensure that ICANN expeditiously proceed in a non-discriminatory manner to the contracting and delegation phases for our .PORN and .ADULT TLDs, according to the established new gTLD rules and procedures. The new gTLD approval, contracting and delegation process was fashioned after many years of multi-stakeholder input that built into the process a variety of opportunities for stakeholders to raise significant concerns at designated and predictable phases throughout the process; our new gTLDs yielded no such concerns.

We look forward to receiving the Registry Agreements for our .PORN and .ADULT TLDs within the next week, as expressly communicated to us via ICANN's Customer Service Communications portal. We hope this provides your team with appropriate information in the event any concerns arise about the .PORN and .ADULT TLDs. Please do not hesitate to contact us with any additional questions you or your team may have.

Regards,

Sheri Falco  
ICM Registry LLC  
General Counsel