

ICANN Public Comment Summary Report

Proposed Renewal of the Registry Agreement for the .XXX top-level domain (TLD)

Open for Submissions Date:

Monday, 18 March 2024

Closed for Submissions Date:

Monday, 29 April 2024

Summary Report Due Date:

Friday, 13 September 2024 (extended from Thursday, 20 May 2024)

Category: Other

Requester: ICANN org

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Open Proceeding Link: <https://www.icann.org/en/public-comment/proceeding/proposed-renewal-of-the-registry-agreement-for-the-xxx-top-level-domain-tld-18-03-2024>

Outcome:

ICANN org received nine comments on the proposed renewal of the .XXX Registry Agreement: five from individuals and four from organizations. Commenters voiced general support for the inclusion of obligations from the base generic top-level domain (gTLD) Registry Agreement (Base RA) related to combating Domain Name System (DNS) abuse and operating requirements for the Registration Data Access Protocol (RDAP).

Some of the commenters voiced concerns about the proposal to remove the .XXX TLD sponsorship. Some commenters also raised concerns and made accusations against the conduct of the .XXX Registry Operator and the .XXX TLD sponsor. A couple of commenters supported the sponsorship removal, and many of the commenters voiced support for moving .XXX to the Base RA.

ICANN org appreciates the community's participation in this proceeding and is grateful to those who provided their feedback and suggestions.

Section 1: What We Received Input On

ICANN org and ICM entered into the current .XXX Registry Agreement (RA) for the operation of the .XXX TLD on 31 March 2011, with an initial term of 10 years that was extended to 30 September 2024. The .XXX TLD was applied for and began its existence as a sponsored TLD. A "sponsored" TLD is a specialized TLD that has a sponsor representing the narrower community that is most affected by the TLD. The sponsor carries out delegated policy

formulation responsibilities over many matters concerning the TLD. The current .XXX TLD sponsor, the International Foundation for Online Responsibility (IFFOR), has been the .XXX TLD sponsor (Sponsor) since ICM entered into the March 2011 RA.

ICANN org sought input from the community on ICM's proposal to renew the .XXX RA using the Base RA and to not include the .XXX sponsorship designation. The proposed .XXX RA renewal would closely align with the existing, similar concept .ADULT, .PORN, and .SEX Registry Agreements that utilize the Base RA, as generic, non-sponsored, non-community TLDs.

Below are highlights of provisions in the proposed .XXX RA renewal that are different from the current .XXX RA:

- Adds obligations related to combating DNS abuse using the enhanced obligations from the 2024 Global Amendment to the Base RA that specify that the registry operator is required to promptly take reasonable and appropriate action to stop or otherwise disrupt DNS abuse.
- Adds the obligations from the 2023 Global Amendment to the Base RA that specifies operating requirements for RDAP, including reporting and service level requirements for RDAP and the requirement for registry operators to comply with the gTLD RDAP Profile.
- Includes an expanded set of voluntary Public Interest Commitments (PICs) which continues to include the current .XXX voluntary PICs and incorporates some of the obligations currently contained in the Sponsorship Appendix S.
- Adds the Base RA provisions regarding registry operator code of conduct obligations, which, among other obligations, requires the registry operator to maintain a level of separation from related parties that offer registrar or registrar-reseller services and that the registry operator annually certify to ICANN org its compliance with the code of conduct provisions.
- Adds the Base RA provisions related to the use of registrars and registry-registrar agreements, requiring the registry operator to use a uniform and non-discriminatory agreement with all registrars authorized to register names in the TLD, providing standardized 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.

The proposed .XXX RA renewal also includes an addendum that, as done with past legacy TLDs that have adopted the Base RA, modifies terms in the Base RA that are inapplicable due to the nature of the legacy TLD. Such modifications include removing references to the initial delegation of the TLD, entry into the root zone, statements made in the registry TLD application, launch of the TLD, pass-through fees related to the trademark clearinghouse, and the continued operations instrument provisions as they are not applicable to a legacy TLD that has been in operation for over a decade.

Section 2: Submissions

Organizations and Groups:

Name	Submitted by	Initials
Tucows Domains	Reg Levy	TD
CORE Association & COREhub	Amadeu Abril	CC
ICANN Business Constituency	Business Constituency	BC
At-Large Advisory Committee	Staff	ALAC

Individuals:

Name	Affiliation (if provided)	Initials
Davies Lewis	I Love Domains – United States o’ America	DL
Lourdes Lucia Leon Pacheco		LP
Michael Palage		MP
Evan Leibovitch and Carlton Samuels		ELCS

Section 2a: Late Submissions

At its discretion, ICANN org accepted late submissions, which have been appended to this summary report.

Individuals:

Name	Affiliation (if provided)	Initials
Jim Davies		JD

Section 3: Summary and Analysis of Submissions

As noted above, ICANN org received nine comments from the community on the proposed renewal of the .XXX Registry Agreement. Commenters voiced overall support for the use of the Base RA for the proposed .XXX RA renewal. Some commenters shared their concerns regarding the proposal to remove the .XXX TLD sponsorship while others offered support for removal of the .XXX TLD sponsorship.

ICANN org would like to thank all the contributors for their valuable suggestions and feedback on the proposed .XXX RA renewal. Each comment has been thoroughly reviewed and a summary of ICANN org’s analysis is provided below by category.

Following a review of all the comments, ICANN org organized the comments submitted into the following general categories:

1. Support for the incorporation of obligations from the Base RA.
2. Opposition to removal of .XXX sponsorship on the grounds of the first mover advantage concept.
3. Legacy registry agreement renewal process, commitments and their enforcement.

4. Suggestion of changing the TLD sponsor.
5. Support for removal of the TLD sponsorship.
6. Misconceptions, assumptions, and allegations and claims.
7. Suggestion to conduct a human rights impact assessment.
8. Suggestion of adding further obligations and commitments for .XXX TLD alone.

This Public Comment summary and analysis report includes a summary of the comments by each of the categories listed above with the analysis of the comments provided immediately following each category.

1. Support for the incorporation of obligations from the Base RA

COMMENTS SUMMARY

- “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.” (MP)
- “Indeed, we appreciate the movement to harmonize .XXX with other generic top-level domains (“gTLDs”); doing so will reduce public confusion regarding policy differences between gTLDs, and improve uniformity of application for both would-be registrants and the general public.” (EL&CS)
- “Bringing the TLD in line with other gTLDs will benefit everyone, including potential registrants.” (TD)
- “ICANN should remain committed to combating Domain Name System (DNS) abuse, for which the obligations from the 2024 Global Amendment to the Base RA (registries should take reasonable and appropriate action to stop or otherwise disrupt DNS abuse) are relevant. I am in favour of considering these provisions in the renewal.” (LP)
- “The ALAC appreciates ICANN org’s efforts in standardizing contracts for compliance enforcement purposes, including the addition of recent Global Amendments and Base RA provisions.” (ALAC)
- “CORE Association and COREhub, respectively Registry Operator & RSP, and Registrar, support the renewal of .xxx Agreement and its adaptation to the 2013 RA Base Agreement, but not the removal of its sponsored nature.” (CC)

ANALYSIS OF COMMENTS

ICANN org recognizes the benefits of aligning the .XXX Registry Agreement with the Base RA and appreciates the comments providing feedback on this suggested approach. ICANN org's general preference, where appropriate, is to migrate legacy gTLDs to the Base RA, which:

- provides additional safeguards and security and stability requirements compared to legacy agreements,
- contains standardized technical and reporting obligations for registry operators,
- provides for operational efficiencies for ICANN org,
- establishes consistency for end users, and
- allows for the automatic adoption of any future approved global amendments (such as the recent RDAP global amendment and DNS Abuse global amendment).

2. Opposition to removal of .XXX sponsorship on the grounds of the first mover advantage concept.

COMMENTS SUMMARY

- “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.” (ALAC) (MP)
- “The fact that the original accountability mechanisms increase costs to the registry as compared to other registries should not be the justification for allowing these changes.” (BC)
- “Circumstance may change, but the unilateral declaration of the Registry that sponsorship makes no sense anymore, simply because a) there are other TLDs with similar goals which are not restricted and b) the difficulties /inabilities / unwillingness to fulfill the sponsorship obligations should not be enough to erase all representations, commitments and contractual obligations.” (CC)
- “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. 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.” (MP)

- “The .xxx was approved in a special round for Sponsored/Community tLDs based on a) the existence of a community they were addressed to, b) a sponsoring organisation that represented that community and guaranteed the use for that community and c) certain restrictions to ensure registrants belonged to that community. In exchange of these commitments, in addition to the specific for each TLD application, several TLDs were approved much earlier than the hundreds of tLD in the 2012 round, and also paying a much lower fee. Circumstance may change, but the unilateral declaration of the Registry that sponsorship makes no sense anymore, simply because a) (there are other TLDs with similar goals which are not restricted and b) the difficulties / inabilities / unwillingness to fulfill the sponsorship obligations should not be enough to erase all representations, commitments and contractual obligations.” (CC)
- “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.” (MP)

ANALYSIS OF COMMENTS

ICM applied for .XXX during the period of time where sponsored applications were accepted in the early 2000s. However, the fact that ICM succeeded in an earlier round of expansion of gTLDs does not mean that it is inappropriate to consider whether there can be significant changes to its RA. The .XXX TLD was not delegated until 2011¹, six years after .MOBI was delegated in 2005² and only two years before the first new gTLDs were delegated. The marketplace has evolved significantly over the past 13 years since .XXX was delegated, with the introduction of more than 1,000 new gTLDs, including adult-oriented gTLDs such as .PORN, .ADULT, and .SEX, among other developments. Additionally, there is precedent for ICANN to remove or modify the sponsorship obligations during an RA renewal.

In 2017, ICANN considered a request to remove the sponsorship designation and obligations from the registry operator for the .MOBI TLD, which had applied for and received the same benefits of the sponsorship round that were cited by commenters on the .XXX renewal. ICANN approved the .MOBI RA to renew to the Base RA without retaining the sponsorship during its renewal in 2017.

In addition to considering the change for .MOBI and changes in the marketplace, ICANN has seen an evolution in legacy TLD RAs. For example, ICANN received, considered, and approved a change in the entity serving as the sponsoring organization for the .JOBS TLD,³ and several other legacy TLDs, such as .CAT, .TEL, and .TRAVEL, converted from sponsored to community TLDs at the time of their RA renewal.

¹ [IANA Delegation Report for the .XXX TLD.](#)

² [IANA Delegation Report for the .MOBI TLD.](#)

³ [Public Comment Proceeding on the Proposed Amendment 1 to the .JOBS Registry Agreement and .JOBS RA Amendment No. 1.](#)

3. The Legacy Registry Agreement Renewal Process, Commitments and their Enforcement.

COMMENTS SUMMARY

- “The Registry made commitments in its original agreement that should be maintained, since those were designed to address specific concerns related to the .XXX registry, and were relied on by ICANN and the community in connection with the launch of .XXX.” (BC)
- “ICANN should also very carefully evaluate the consequences of approving applications in specially advantageous conditions based on representations, commitments and agreements that can then be discarded by the simple will of the Registry when they do not provide any such advantage.” (CC)
- “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 “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.” (MP)
- “The ALAC is concerned that the removal of commitments, through a contract renewal, could set a precarious precedent for non-compliance without repercussion for existing Registry Operators that have already committed to voluntary commitments and potential Registry Operators that may introduce RVCs in the future. The ALAC would like to ensure that any commitments entered into by ICANN org and Registry Operators are enforced and complied with.” (ALAC)
- “ICANN has a duty to ensure the public interest is served in its oversight of contracts with registrars and registries. Any changes that remove commitments that were intended to benefit the public interest should be subject to greater scrutiny and justification. As a result, the BC recommends that ICANN clarify that future registry renewals should not be used to remove safeguards and commitments that serve the public interest.” (BC)
- “While not all existing commitments and Public Interest Commitments (PICs) or all upcoming Registry Voluntary Commitments (RVCs) will have direct implications for end user welfare, a great many do and will. If these RVCs are not enforced, the TLD will have been granted under a false premise and end users are the most likely to suffer the consequences. As a general principle, the ALAC believes that commitments made in order to operate a TLD by a Registry Operator should be enforceable, subsequently implemented by the Registry Operator, and enforced by ICANN Contractual Compliance.” and “ Specifically, in the case of .XXX the commitments made by ICM have consumer protection benefits through enhanced abuse reporting and registrant verification which facilitates law enforcement.”(ALAC)

ANALYSIS OF COMMENTS

The concerns raised within these comments tie the prevention of child sexual abuse material, abuse, and other harmful activities to registrant eligibility requirements. While the registrant

eligibility requirements noted by commenters are not maintained within the proposed .XXX RA renewal, key commitments and protections that were included in the current .XXX RA in order to protect against abuse still remain in the proposed .XXX RA renewal as voluntary PICs. These voluntary PICs, as part of the RA, are subject to ICANN compliance oversight and are subject to the Public Interest Commitment Dispute Resolution Procedure (PICDRP). IFFOR (the current .XXX sponsor) shared its view on how those terms, which will remain in the RA renewal, have been effective in preventing abuse in .XXX, stating:

“We feel that the Baseline Policies that were developed by IFFOR at the creation of the .XXX registry and which remain in force have been extremely effective. Despite some very public concerns at its inception that the .XXX registry would become a source of damaging content, including child sexual abuse material, trademark infringement, and malware, the opposite has in fact been the case: .XXX has consistently had one of the lowest rates of abuse and infringement across the entire registry environment (including new gTLDs). We know this, and ICANN knows this, because IFFOR produces an extensive annual report that reviews how many reports ICM Registry receives of any kind of abuse (see below for how we define that). We dig into each case, tabulate them, compare them to previous years, and also evaluate the systems that record and register those reports... Those reports are confidential. However, on this occasion we have published excerpts below to provide the internet community with a sense of why we are confident that the .XXX TLD will continue to operate at its current level with or without IFFOR’s policy involvement.”⁴

IFFOR further noted that ICM’s continued use of those policies and practices, as committed via voluntary PICs in the proposed .XXX RA renewal, will produce similar results for the .XXX TLD without the need for the registrant eligibility requirements of the sponsoring organization. Furthermore, IFFOR noted “a major source of child abuse image concerns stem from sites that allow for third-party postings” and the requirement for registrant membership in the .XXX sponsored community does not prevent the registration of domain names that host sites allowing third-party postings within the .XXX TLD.

In ICANN org’s view, as informed by inputs from IFFOR and the existing examples of the other adult-themed TLDs without such restrictions, the key elements that prevent abuse are maintained within the voluntary PICs. Several adult-oriented gTLDs were delegated in the 2012 round of the New gTLD Program using the “voluntary PIC” model instead of the sponsored TLD model, with no significant ill-effects identified. We believe this history shows that it is logical to align policies for .XXX’s operation with other adult-themed gTLDs.

Additionally, Amendment number 4 to the current .XXX RA incorporates many voluntary PICs into the RA that are modeled upon the voluntary PICs in the .ADULT, .PORN, and .SEX RAs. These commitments are retained in the proposed .XXX RA renewal. The renewal of the .XXX RA, and the proposed transition from a sponsored TLD model to the Base RA model, would not impact or remove the voluntary PICs that are already in place. Rather, the .XXX RA renewal published for Public Comment proposes to maintain the existing PICs and add two additional voluntary PICs, which are adapted from other portions of the current .XXX RA. The voluntary PICs contained in the proposed .XXX RA renewal are as enforceable as any other voluntary PIC from any other gTLD on the Base RA. As with other PICs in RAs on the Base RA, the .XXX PICs (both mandatory and voluntary) are memorialized in Specification 11 of the proposed .XXX RA renewal and compliance with those PICs is enforceable by ICANN and may also be subject

⁴ [IFFOR response to queries following ICANN Public Comment Period: Q1. A1.](#) and [Letter from IFFOR.](#)

to the PICDRP. Should the Registry Operator be found in violation of the PICs, ICANN would follow its compliance process and have the ability to breach and terminate the agreement with the Registry Operator if circumstances warranted this action.

As previously mentioned, the voluntary PICs in the proposed .XXX RA renewal are not new commitments, but rather reflect restrictions and obligations that are already in effect for .XXX in some form and which are already subject to ICANN Compliance oversight and enforcement. Commenters noted they want these commitments to be retained in the renewed .XXX agreement. Retaining these terms in the .XXX RA renewal is consistent with other gTLDs from the 2012 round using the Base RA, and emulates the other adult-themed gTLDs from the 2012 round: ADULT, .PORN, and .SEX gTLDs.

Lastly, ICANN and ICM have followed existing practices with regard to bilateral contract negotiations for legacy registry agreement renewals, in which registry operators have the ability to negotiate the terms of their RA with ICANN. In this instance, those negotiations included a request by ICM to transition to the Base RA and to not include a sponsorship provision.

4. Suggestion of changing the .XXX TLD sponsoring organization

COMMENTS SUMMARY

- “In lieu of IFFOR, ICANN should ensure that a replacement organization is identified to serve the functions required by the .XXX registry. A reputable organization such as the Internet Watch Foundation could be considered as a replacement.” (BC)
- “We believe that before doing any such change, ICANN should consider evaluating the possibility to find an alternative sponsoring organisation. This may certainly fail, as most likely the community never existed as such.” (CC)

ANALYSIS OF COMMENTS

ICM has suggested that the sponsorship overall is not needed, not that IFFOR has not done good work or served well as the sponsoring organization. Therefore, this was not a consideration for the proposed .XXX RA renewal.

5. Support for the proposed renewal and sponsorship removal

COMMENTS SUMMARY

- “Coming at this issue from a narrow perspective that focuses solely on its impact to Internet end-users, we do not see any significant negative effects resulting from the renewal of the .XXX Registry Agreement as requested by the current Registry Operator. Indeed, we appreciate the movement to harmonize .XXX with other generic top-level domains (“gTLDs”); doing so will reduce public confusion regarding policy differences between gTLDs, and improve uniformity of application for both would-be registrants and the general public.” (ELCS)
- “As a registrar for .xxx domain names, the above challenges add complexity to the registration path and we support making it easier and less intrusive to register domain names.” (TD)

- “We note that despite the passage of more than a decade since its introduction, not a single one of the 25 most-heavily used “adult-oriented” Internet destinations in the world uses the .XXX domain. Given this current reality, all concerns about registrant-based personal abuse and exploitation -- and resultant policy and contract requirements such as labeling -- must aspire to be identical for .COM, .XXX and every other gTLD.” (ELCS)
- “However, the ongoing relevance of an sTLD just for the adult entertainment industry in the current landscape of top-level domains (“TLDs”) is questionable. The Internet has evolved to include a vast array of generic TLDs (“gTLDs”).” (TD)
- “In summary, we share the view of IFFOR, its original sponsoring organization, that the evolution of .XXX from a sponsored gTLD to a generic one is reasonable and positive; its proposed Agreement Renewal should proceed without obstacle. Reducing divergence between gTLD policies, we believe, improves end-user confidence in a reliably-consistent domain namespace.” (ELCS)
- “The registry has provided sufficient proof that verification and membership requirement is outdated and no longer necessary. Bringing the TLD in line with other gTLDs will benefit everyone, including potential registrants.” (TD)

ANALYSIS OF COMMENTS

Over a decade has passed since the .XXX TLD was delegated and launched. With the introduction of more than a thousand new gTLDs, the TLD marketplace has evolved. Pornography exists on the Internet in many namespaces. The issues of Child Sexual Abuse Material (CSAM) and other forms and types of abuse, including DNS abuse, are also not unique to the .XXX TLD.

When .XXX was first introduced, the .XXX sponsorship provided a means of developing policies and best practices to operate .XXX in a responsible manner. During the 2012 round of the New gTLD Program, these policies and best practices were proposed by ICM in its applications for the .ADULT, .PORN, and .SEX gTLDs and were incorporated into those RAs, without sponsorship, as voluntary PICs.

The current .XXX sponsor, IFFOR, provided support for the effectiveness of the policies and noted in further public statements that it is not necessary to maintain the sponsorship in order to ensure the effectiveness of those policies. In a response from IFFOR to queries following the recently concluded ICANN Public Comment proceeding, IFFOR wrote:

“We feel that the Baseline Policies that were developed by IFFOR at the creation of the .XXX registry and which remain in force have been extremely effective.”⁵

Furthermore, in a letter from IFFOR to ICANN in October 2023⁶, IFFOR offered a statement on the continuation of its role as sponsor:

“Those [IFFOR Ombudsman] reviews have revealed how effective the policies have been, and continue to be, in preventing abuse within the .XXX namespace. We

⁵ [IFFOR response to queries following ICANN Public Comment Period: Q1. A1.](#)

⁶ [Letter from IFFOR to ICANN.](#)

understand that ICM Registry plans to incorporate those policies within a revised .XXX Registry Agreement. The continued use of those policies and practices, we believe, will produce similar results going forward, and does not require IFFOR to serve as the Sponsoring Organization to ensure they are effective.”

The proposed .XXX RA renewal emulates other adult-themed gTLDs (.ADULT, .PORN, and .SEX RAs). These three adult-themed gTLDs are similar in concept to the .XXX TLD, yet are operated as generic TLDs on the Base RA and include voluntary PICs with similar obligations and commitments as those contained in the best-practice policies developed for the .XXX TLD that are designed to combat CSAM. All four of these adult-themed TLDs are operated via an organization under GoDaddy’s ownership. While .ADULT, .PORN, and .SEX contain similar voluntary PICs as .XXX, a key difference from .XXX is that they do not include a requirement to be a member of an adult-themed community to register a name. Considering the history and evolution of .XXX, the changes seen in the marketplace, the introduction of thousands of new gTLDs, and the input provided by the Registry Operator, .XXX sponsor, and the sponsored TLD community, it is practical to evolve the .XXX RA to model these examples.

In addition to emulating the other adult-themed, non-sponsored gTLDs, the proposed .XXX RA renewal retains key protections and registry operator commitments from the current .XXX RA by including the existing .XXX PICs and obligations and provisions currently contained in the .XXX RA and Sponsorship Appendix S.

6. Misconceptions, assumptions, and allegations and claims.

COMMENTS SUMMARY

- “If a Registry Operator would like to withdraw from or alter its commitments, the Registry Operator must do so through the Registry Services Evaluation Policy (RSEP) process and not simply a contract renewal process.” (ALAC)
- “Removal of these commitments should follow the standard procedures, rather than through the renewal process being used here, which provides a lower standard than what is required by consensus policy. Specifically, these changes should have been undertaken pursuant to the Registry Services Evaluation Policy (RSEP) as required by ICANN Consensus Policy.” (BC)
- “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.” (MP)
- “The acquisition of a sponsored registry by another also raises additional concerns that should be considered. Acquisitions of registries should be accompanied by a commitment to preserving the original requirements that were encompassed in the registry agreement and application, rather than be a mechanism for eliminating obligations that were made to induce ICANN to grant the registry to the original applicant. This could be seen as an end-run around the accountability mechanisms that were so carefully negotiated at the time .XXX was approved.” (BC)
- “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.’ ” (MP)

- “The ALAC is concerned about the formation and implementation of commitments that are made by potential and existing Registry Operators that are perceived by end-users as unimplemented or unilaterally discarded by the Registry Operator and unenforced by ICANN Contractual Compliance.” (ALAC)
- “However, it appears from recent reporting that the .XXX accountability structures were never fully fulfilled. ICANN Compliance should therefore investigate the nature and extent to which these accountability processes were properly implemented, before concluding that they are no longer needed.” (BC)
- “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.” (MP)
- “Essentially, from what I can tell, IFFOR does nothing, other than pay those who work there very well for doing basically nothing. It appears to have never properly carried out the function stipulated in the .xxx bid and contracts. It does not get paid in accordance with the contract. It does not spend money in accordance with the contract. I would urge ICANN to close this down, remove .xxx from the current registry and sort out what is, in my view, little more than a dysfunctional gravy train. I do not think misconduct should be rewarded.” (JD)

ANALYSIS OF COMMENTS

Regarding use of the Registry Services Evaluation Policy (RSEP) process to remove commitments and obligations: The RSEP process is a mechanism for registry operators to request to add, modify or remove Registry Services; and does not serve as a means for registry operators to add, modify, or remove voluntary PICs or other sponsored TLD policies and obligations. Furthermore, in accordance with the RSEP, the scope of ICANN org’s evaluation is focused on potential significant security, stability, and competition issues and would not address the concerns raised in the comments noted above. It is possible that these comments may be conflating the RSEP process with the Community gTLD Change Requests Process, which permits a Community gTLD registry operator to seek approval from ICANN to modify the Community Registration Policies enumerated in Specification 12 of its RA. However, this process is specific to Community gTLDs from the 2012 Round of the New gTLD Program that wish to modify, within a limited scope, their Community Registration Policies in Specification 12, and is not applicable to this scenario.

On the acquisition of a sponsored registry: The existing .XXX RA and its obligations and commitments remained unchanged after being acquired by MMX in 2018 and GoDaddy in 2021.

Conversations about evolving the .XXX RA and the RA renewal are a result of the upcoming end of the current RA term, and have followed existing practices of bilateral contract negotiations and previous renewals of legacy TLD registry agreements.

Regarding enhanced abuse metrics reporting: In the current .XXX RA, the voluntary PICs are contained in Appendix 9, via Amendment 4. These PICs are not being eliminated from the proposed .XXX RA renewal; rather, the proposal as posted for Public Comment simply moves those PICs within the RA in order to conform to the structure of the Base RA. Not only are all of the PICs carried over from Amendment 4, but the proposed .XXX RA renewal carries over terms from the existing .XXX RA, such as a commitment that the .XXX Registry Operator will continue its abuse reporting and provide to ICANN a certification and confidential summary of the nature and quantity of complaints received (adapted from the current .XXX RA section 3.1(h)). Therefore, ICM's existing practice and abuse reporting will continue, with just a procedural change that such report will no longer undergo review by the IFFOR Ombudsman before it is submitted to ICANN. Some of the concern in the comments appears to be focused on limiting registrations to members of the sponsored community, which these commenters believe provides consumer protection benefits. However, the other adult-themed gTLDs operate with nearly identical voluntary PICs and without a sponsorship or community membership requirement and have a low incidence of abuse as noted in both IFFOR's and ICM's letters to ICANN org.

On registrant verification and third party for "labeling and monitoring": The registrant verification practices and contract for labeling and monitoring noted in the comments refer to the Start-up Plan for .XXX (Appendix S, Part 4.1). Those practices are noted and connected to the .XXX TLD start-up and launch plans; they are not contemplated as mandatory through the life of the TLD. As such, they are not currently in practice under the current .XXX RA and, therefore, nothing is changing in that regard for the proposed .XXX RA renewal.

Regarding allegations against ICM and IFFOR: ICM provided a detailed rationale⁷ regarding its request for the .XXX RA renewal. ICANN, through its Compliance team, has established compliance processes where complaints and concerns may be submitted and investigated for merit, evidence uncovered, and actions that are taken if determined necessary based on the findings. If there are concerns regarding ICM's compliance with the .XXX RA, such concerns (if any) should be raised with ICANN Compliance for investigation and are considered outside of the scope of this Public Comment proceeding.

7. Suggestion to conduct a human rights impact assessment

COMMENTS SUMMARY

- "I suggest conducting a thorough human rights impact assessment and risk assessment of the proposed .XXX renewal agreement, considering the potential implications for freedom of expression, privacy, child protection, and other fundamental rights. So far, GAC did not find that porn, .adult and .sex require any additional safeguards, as stated by GoDaddy Registry. It should be evaluated if this is the current situation and if additional measures and safeguards should be taken regarding .XXX." (LP)

ANALYSIS OF COMMENTS

⁷ [Letter from ICM Registry, LLC - February 2024](#) and [Letter from ICM Registry, LLC - May 2024](#)

While a human rights impact assessment (HRIA) can be a useful tool for assessing human rights impacts, there is ongoing work across the ICANN community to determine the extent to which HRIAs can and/or should be used in the bottom-up multistakeholder model and what types of HRIAs are applicable to ICANN's work. There are significant resource implications associated with conducting an HRIA and these need to be taken into account as part of the ICANN budget and related priorities. We look forward to receiving that guidance from the community once ready.

In the meantime, we encourage consideration of existing ICANN processes and mechanisms in order to ascertain potential human rights implications.

8. Suggestion of adding further obligations and commitments for the .XXX TLD alone

COMMENTS SUMMARY

- "ICANN should reconsider the Proposed RA and include the following provisions into a Specification 12:
 - 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;
 - 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').
 - To require the Registry Operator to enforce labeling and monitoring of all domains within the .XXX zone file
 - 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.
 - 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." (MP)
- "The renewal of the .xxx contract must follow democratic concepts of internet governance, and listen to the entire society and multiple sectors. I take this opportunity to suggest:
 - Price limit for .xxx, with the aim of preventing sudden increases and speculation on the part of Registry Services LLC;
 - Re-elaborate policies for .xxx operations;
 - Prevent .xxx from being used as a domain to only make money, deviating from its objective and function." (DL)

ANALYSIS OF COMMENTS

As shared in Section 3 above in our analysis of comments related to “The Legacy Registry Agreement Renewal Process, Commitments and their Enforcement,” key commitments and protections remain in the proposed .XXX RA renewal. IFFOR, as the current .XXX sponsor, shared its view on the effectiveness of the commitments retained in the form of PICs in the proposed .XXX RA renewal:

“We feel that the Baseline Policies that were developed by IFFOR at the creation of the .XXX registry and which remain in force have been extremely effective. Despite some very public concerns at its inception that the .XXX registry would become a source of damaging content, including child sexual abuse material, trademark infringement, and malware, the opposite has in fact been the case: .XXX has consistently had one of the lowest rates of abuse and infringement across the entire registry environment (including new gTLDs).”

In light of all of the above, ICANN’s view is that the PICs and obligations included in the proposed .XXX RA renewal are sufficient. ICANN has not identified a need to add further, new obligations for the operation of .XXX or to treat .XXX differently than other adult-themed gTLDs, particularly in light of the similar PICs that the .ADULT, .PORN, and .SEX gTLDs have utilized for approximately the last decade.

Section 4: Next Steps

ICANN org has carefully considered the comments received and consulted with the ICANN Board of Directors regarding next steps for the renewal of the .XXX Registry Agreement.

A decision and rationale will be shared in the coming weeks, prior to the renewal of the .XXX RA.

Submission Regarding IFFOR and ICM .xxx Registry

Introduction

I do not think the ICM contract should be renewed. I say that because I believe the IFFOR tax returns and other material indicate that the parties have never carried out their obligations under the contract. They should not be rewarded for this continual breach of contract. I think the .xxx registry should be moved to another operator, while its future existence is reviewed by the ICANN community.

I came to the conclusions on breach having reviewed the IFFOR tax returns, its website and correspondence with its board. It seems to me that the main purpose of IFFOR is to pay generous salaries to people on what appears to be little more than a gravy train.

I attach the tax returns, which can be found here - <https://projects.propublica.org/nonprofits/organizations/451015160>

I also attach a spreadsheet that summarizes and collates the figures in the returns.

Revenue

IFFOR accepts that it has never operated in accordance with the revenue provisions of the contract with ICM.

Under the contract, it was due to receive \$10 per .xxx domain registered.

It seems to me that never happened, though the tax returns continue to describe that as their source of revenue. Since 2105 it has been paying flat fees of say \$100,000 per annum, which clearly do not relate to the number of .xxx domains issued.

Expenditure

Grants

Box 10 of Part 1 of the tax returns shows the amount spent on grants.

Every return shows that \$0 has been spent on grants.

IFFOR claims to have made more than 100 grant payments.

I asked the IFFOR board about this.

Sheri Falcon referred me to the 2014 board minutes as an example of when grant payments were approved. The 2014 tax return shows that no grant payments were made that year. I raised that with Sheri and she did not respond.

The other answer from IFFOR was that "*many of the grants awarded in recent years were free versions of the AtFirstSite educational course.*" That material has never been sold and again shows as zero as a revenue source. It is free material and does not in my opinion constitute a grant.

In short, in my opinion, IFFOR has never made any grants. It also falsely claims that it has.

Staff and Board Costs

Unlike grants, IFFOR has spent a lot of money on its staff and board.

Total executive pay between 2011 and 2023 is around \$ 1,526,021

If you add board stipends, that rises to \$ 1,786,854

Even without finding money paid in other ways, that means that around two-thirds of IFFOR's \$2,781,258 revenue has been paid to its small executive team – Kieren McCarthy, Joan Ivine, Clyde Beattie, Sebastien Bachollet, Crystal Peterson and Sheri Falcon.

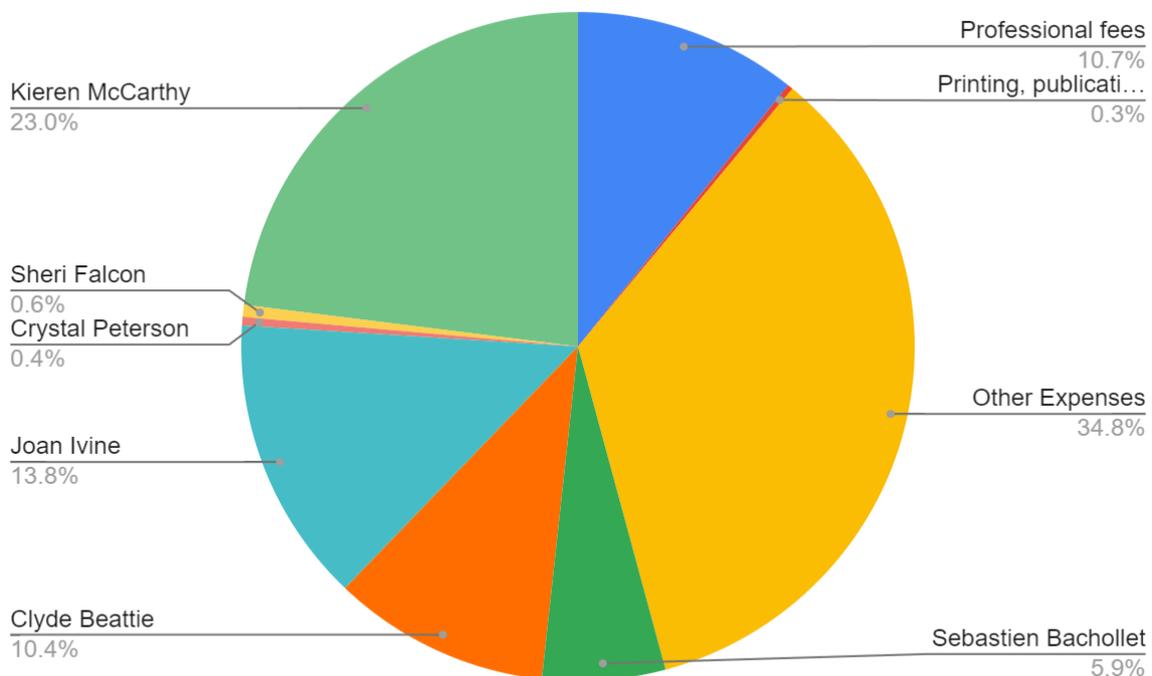
Most of that money has gone to executive director Kieren MCarthy, around \$647,938 since 2013. Before that he was hired as a contractor, so his first two years of income are not identifiable. Even if we ignore that, his salary alone amounts to around a quarter of IFFOR's revenue.

In the 2015 tax return, non-executives Sebastien Bachollet and Clyde Beattie received combined remuneration of \$192,000 for a stipulated 4 hour working week. That's equivalent to a pro rata payment of \$1.92 million for a full working week.

Joan Irvine appears to have received \$390,000 in a little over 2 years.

Other expenses are hard to break down. Especially after the returns were reduced to a shorter form from 2015 onwards.

Compare these figures to zero grants paid and no obvious meaningful output.



Output

We've already established that IFFOR's claims to have paid grants appear to be false.

IFFOR accepts that it created standards in 2011 and has not changed them since, essentially saying that they are so good they don't need to be revised.

IFFOR claims to have handled disputes, but says the reports are confidential.

Before publishing a response to this consultation, the most recent news item on the IFFOR website was from 2021. That was an update on its AtFirstSite program.

The next item in 2021 was inviting grant applications, but as we have already established, no grants were paid. So that would appear to be misleading and false.

The most recently published Policy Board minutes are from May 2020.

The most recent published board minutes are from January 2018.

Conclusion

Essentially, from what I can tell, IFFOR does nothing, other than pay those who work there very well for doing basically nothing.

It appears to have never properly carried out the function stipulated in the .xxx bid and contracts.

It does not get paid in accordance with the contract.

It does not spend money in accordance with the contract.

I would urge ICANN to close this down, remove .xxx from the current registry and sort out what is, in my view, little more than a dysfunctional gravy train. I do not think misconduct should be rewarded.

Jim Davies

Solicitor

In a personal capacity

29 April 2024