



23 March 2007

Dr. Vinton Cerf
Members of the Board of Directors
Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way
Suite 330
Marina del Rey, California 90292-6601

Dear Dr. Cerf and members of the ICANN Board:

ICM Registry has undertaken additional analysis¹ of the pre-reservation data, again confirming:

- There is strong interest in and support for .XXX by a clearly defined sponsored community;
- The documented support for .XXX exceeds the support demonstrated by any other applicant, and far exceeds the support demonstrated by any applicant other than puntCAT;
- There is no reasonable basis for doubt regarding the validity and relevance of the support documented by ICM Registry; and
- There is no reasonable basis for doubt regarding ICM Registry's compliance with the evaluation criteria.

For your additional information:

1. The pre-reservations were submitted by bona fide members of the adult industry:

- Members of the adult industry, applying directly and using their own credentials, account for 87 % (66,999) of the pre-reservations.
- 93% of these were submitted with URL verification information that corresponds to existing adult industry sites, enabling ICM to confirm that those submitting pre-reservation requests are in the online adult industry.
- Agents and registrars representing adult industry clients, many already known to us as bona fide representatives of some of the leading members of the sponsored community, along with some adult industry resellers, accounted for the remaining pre-reservations.

¹ ICM has proposed to undertake an extensive validation process before registration credentials are issued, and the review described here does not, in any way, substitute for the validation process set forth in the ICM application.

2. Those submitting pre-reservation requests are generally the people they claim to be, and the operators of the adult URLs they have identified:

- The Whois information for the validation URLs shows a high degree of consistency with the other information provided by those submitting pre-reservation requests.²

3. The pre-reservations are not from speculators:

As previously reported, over 71,000 of the requests are for unique strings.

- The limited duplication is consistent with actual registration patterns. You would expect some duplication, because different registrants hold the same string in different TLDs (*e.g.*, different registrants hold the string “sex” in the .com, .net, .org, .biz, and .us TLDs). But if speculators were submitting pre-reservations, we would expect to see a far higher percentage of duplication, especially for popular strings.

4. The pre-reservations are not defensive:

- As previously indicated, far less than 1% of the requests submitted came from members of the adult industry who participated in the ICANN forums to oppose .XXX.

5. The pre-reservations are not abusive:

- Fewer than 100 pre-reservation requests were clearly or potentially abusive.³

6. There is no reasonable basis to question ICM’s compliance with the sponsorship criteria:

- By any objective measure, ICM Registry has demonstrated the existence of a substantial, supportive, sponsored community.
- Even the original Sponsorship and Other Issues Evaluation Team confirmed in 2004 that ICM demonstrated “considerable support” from the community.⁴ Everything we have provided since undeniably reinforces that assessment.
- Even a cursory review of the information ICM has already provided shows that the pre-reservation requests came from members of the adult entertainment industry who, by

² We did not expect to find - and it would be astonishing to find in any industry sector - a complete correlation between the individuals submitting pre-reservation requests and the Whois information for the validation URLs.

³ As previously indicated, ICM has built numerous mechanisms into the registration process to minimize abusive registrations, and to detect and deal with any successful registrations that turn out to be abusive.

⁴ Status Report on the sTLD Application Process, Appendix D (Updated 03 December 2005); available at: <http://www.icann.org/tlds/stld-apps-19mar04/>.

submitting their pre-reservation, provided concrete evidence of their intention to use the sTLD.

7. The level of documented support massively overshadows any demonstration required of other sTLD applicants, and cannot be dismissed because ICM has chosen to respect the privacy rights of supporters.

- ICANN never requires participants in the public forums to identify themselves, and in every case masks their email addresses.
- ICANN did not require the applicants for .cat to verify the identity or qualifications of those who signed its support petition, nor did ICANN require that the individuals’ names and affiliations be placed in the public record.⁵
- Even if, as some Board members have suggested, one were to discount the substantial documented support for .XXX because ICM has chosen to respect the privacy of these supporters:
 - The demonstrated support for .XXX evidenced by (i) letters of support from major industry participants, (ii) pre-reservations received, and (iii) website subscribers would still massively overshadow any demonstration required of other applicants.
 - The demonstrated support for .XXX would still dwarf actual registration in ICANN’s existing sTLDs. Other than .mobi, (which, while an sTLD, is **not** a restricted community) only two sTLDs (.travel and .cat) have more than 20,000 registrations (and each has fewer than 25,000 registrations). The others, including sTLDs that have been in existence for some time, have many fewer registrations.

8. By deferring to a noisy minority, ICANN is thwarting private sector efforts to lead through self-regulation, and increasing global pressure on governments to regulate content on the Internet.

- Without a doubt, the debate surrounding ICM Registry’s proposal for an .XXX domain has been emotional. But the vehemence with which an organized minority has expressed its views should not persuade ICANN to succumb to a “heckler’s veto.”

⁵ Associació puntCAT asked its supporters to register their support for the proposal on their website (<http://www.puntcat.org>) rather than on the ICANN public forum. puntCAT reported that it collected endorsements from 54,981 individuals who “signed up” and provided relevant contact data. Apparently the supporters agreed to have their name and contact data sent to ICANN, but this information was not posted. <http://forum.icann.org/lists/stld-rfp-cat/msg00019.html>. In response to the evaluation team’s request for further information about these supporters, including copies of their statements and letters, puntCAT responded, “Unfortunately we cannot provide the Evaluators with the contents of the file regarding to individuals right away. Our domestic (both EU and Spanish) Personal Data Protection legislation require a specific procedure for exporting such data outside the EU, including formal representations and guarantees from the receiving end.” <http://www.icann.org/tlds/stld-apps-19mar04/>. To ICM’s knowledge, neither ICANN nor puntCAT verified the identity of those providing endorsements, nor of their membership in the sponsored community for .cat. (Nor are we suggesting that should have been done.)

- To do so would affirmatively deny responsible members of the adult community the opportunity to use the inherent powers of the Internet to facilitate effective, voluntary self-organization and self-regulation.
- The opposition to .XXX constitutes a fraction of the adult webmaster community, and undoubtedly includes distributors (referred to as “affiliates”) for established players.
 - None of them are known to ICANN and the Board through years of responsible and constructive participation in the ICANN process.
 - None of them have been required to verify their status as adult webmasters, and many have not volunteered their names or contact information.
 - As the National Academy of Sciences demonstrated in its 2002 publication, *Youth, Pornography, and the Internet*,⁶ entry costs for affiliates are low, but the market is highly competitive, and they operate on very low margins.
 - Accordingly, they may have limited incentives to engage in behavior that will increase their costs vis a vis other low-margin competitors.⁷
 - The facts that we have already reported to ICANN support the Academy’s conclusions about incentives, inasmuch as many of those opposing self-regulation using the .XXX domain do not label their sites or use similar “best practices.”⁸
- Further, according to the National Academy of Sciences, while responsible members of the online adult entertainment industry have “strong incentives to self-regulate,” successful self-regulation requires a coordination mechanism. As the Academy noted, the highly fragmented structure of the industry greatly increases the difficulty of successful self-regulation.

⁶ Dick Thornburgh and Herbert S. Lin, eds., *Youth, Pornography and the Internet* (CSTB 2002). Available at: <http://www.nap.edu/catalog/1026.html>.

⁷ Thus, according to the Academy, those operating on the lowest margins, to varying degrees: (1) Survive by drawing large volumes of traffic to their site by advertising, paying for preferential search engine placement, and using sexually explicit domain names and expiring domain names that generate traffic; (2) Rely on sexually explicit spam, typo-squatting, mousetrapping, and page-jacking to generate traffic; and (3) Engage in deceptive marketing techniques and credit card fraud to generate revenue. *Id.*

⁸ See Memorandum of 8 March 2007, footnote 3: “ICM recently reviewed websites operated by or affiliated with those who expressed support for .xxx, and compared them with a site operated by approximately fifty, randomly selected webmasters who have opposed .xxx. Though admittedly not scientific, the comparison is instructive: 93% of the sites operated by ICM supporters employ warning pages, age verification tools, and password-limited access. In comparison, less than 40% of the sites operated by ICM opponents have such practices. Nearly 80% of the sites operated by ICM supporters have ICRA or other labels, compared to 20% of those operated by ICM opponents. These differences emphasize the distinct needs and interests of the adult content webmasters who make up the sponsored community.”

- The creation of a sponsored top-level domain for responsible adult webmasters is needed to facilitate coordination and support self-regulation.
- Ironically, much of the stated opposition to .XXX is based on the erroneous assertion that creating a voluntary sTLD will “encourage” national governments to make such a domain mandatory. To the contrary, continued failure to permit .XXX to go forward as an effective vehicle for voluntary self-regulation will do more to persuade government bodies that mandates are desirable, however unworkable they may be.

By any standard, ICM Registry has fulfilled all of the requirements of the RFP. ICM’s proposal to create a new sTLD for responsible adult webmasters has been singled out for disparate treatment throughout the process, and ICM has jumped through the myriad additional hoops that have appeared over the course of this extended process. ICM has stood behind every commitment and every representation made in this process.

There can be no further excuse for delay, and ICANN’s choice is clear. ICANN can either:

- Adhere to the ICANN Bylaws and its own processes by approving the ICM Registry Agreement and permitting the community of responsible adult webmasters to create an easily recognizable virtual marketplace that will operate on the basis of best practices, informed by input from a broad group of stakeholders; or
- Cave to political pressure, overblown opposition from members of the adult industry outside of the sponsored community, and those who believe that acknowledging the existence of adult entertainment on the Internet amounts to “legitimizing” it.

Electing the latter option, or attempting to avoid responsibility through another delay, will only further undermine the legitimacy of ICANN, and the Internet community’s support for the ICANN process.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stuart Lawley".

Stuart Lawley,
President and CEO