

Update on ICM Registry .XXX Registry Agreement

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ALAC / At-Large Concerns

- There are material changes to the proposed .XXX registry agreement that lower the safeguards to internet end users, including children.
- There appears to be material violations of the Registry Agreement and ICANN Consensus Policy which ICANN Compliance has not enforced.
- ICANN is setting a dangerous precedent by allowing Registry Operators to deviate from representations made during the application process and rewarding them economically.
- Overall fairness, should ICM Registry be rewarded for claiming that a community exists that allowed it to participate in the 2004 Sponsored Round, instead of waiting to participate in the 2012, to now claim that this community does not exist?

Substantial Deviation - Registrant Verification

Original Agreement

- ICM published “authentication and verification procedures” per Appendix S, Part 4.1
- **The Registry Operator undertook authentication AND verification** by a third party on the following data elements: natural/legal person; address, telephone, and email.
- Original Authentication and Verification procedures are available here.

Proposed Agreement

- **“Registrant represents** and warrants to have provided current, complete, and accurate information in connection with its registration”

Registrant Verification Problem

- The Registry Operator had an original contractual obligation to authenticate and verify Registrants.
- The Registry Operator is proposing to absolve itself of any obligation and shifts the burden to the Registrant to self-attest.

Important Consideration: The original ICM Registry Agreement on authenticating and verifying registrants on its face meets and/or exceeds the requirements under NIS 2.0 Article 28. ICANN Compliance should enforce these original contractual requirements on ICM Registry to provide a baseline for the rest of the ICANN community to inform any future policy development work.

Substantial Deviation – Website Labeling

Original Agreement

- ICM Registry represented in Appendix S, Part 4.1 that “IFFOR Contracts for Labeling and Monitoring executed”

Proposed Agreement

“Child Protection Labeling. Registrant understands that Registry Operator **may label** the sites in the TLD and any site to which such sites are automatically redirected irrespective of the top-level domain for child protection purposes; registrant consents to such labeling.”

Website Labeling Problem

- The Registry Operator had a contractual commitment that IFFOR would engage a third party for labeling and monitoring domains in the .XXX zone.
- The Registry Operator is merely reserving the right to monitor without making any contractual commitment to monitor domains.

Substantial Deviation – IFFOR Structure & Funding

Original Application/ Agreement

- IFFOR has delegated policy responsibility for .XXX registration (Appendix S)
- ICM Registry represented that IFFOR would have a minimum of 7 Directors, from diverse sectors, including child advocacy and adult entertainment. (Original Application)
- IFFOR was to receive \$10 per .XXX domain name registration. (Application Process)

Proposed Agreement

- “Registry Operator will include in its TLD Anti-Abuse Policy or the Registry-Registrant Agreement commercially reasonable best practices policies developed by the Registry Operator in consultation with industry experts - such as the Internet Watch Foundation (IWF), the International Foundation for Online Responsibility (IFFOR), and other similar organizations

IFFOR Structure & Funding Problem

- Originally, IFFOR was contractually tasked under Appendix S to develop and maintain “Policies and Best Practices Guidelines” for the registration of .XXX domains.
- It does not appear that IFFOR has operated as an independent policy body with representatives of all relevant stakeholders.
- ICM Registry originally committed to \$10 per domain name registration but then reverted to only paying IFFOR for resolving domain names, costing IFFOR hundreds of thousands of dollars.
- Difficult to track IFFOR grants from IFFOR’s 990 tax returns.
- The new Registry Agreement deprecates this policy responsibility and IFFOR is now just one of several organizations that can be consulted.
- ICM Registry appears to have no obligation to fund IFFOR at \$10 per domain name under the new agreement.

Substantial Deviation – ICM Registry Certification

Original Agreement

- Article 3.1(h) “Registry Operator shall [annually] deliver to ICANN a certification executed by the chief executive officer of Registry Operator certifying as to Registry Operator's **compliance in all material respects with the terms of this Agreement** (including the Appendices hereto).

Proposed Agreement

“[A] certification executed by an executive officer of Registry Operator certifying as to Registry Operator’s compliance with the public interest commitments contained within **Section 4 of Specification 11** of the Registry Agreement

ICM Registry Certification Problem

- The original ICM Registry agreement required the ICM Registry CEO to provide an annual certification regarding **all material terms** of the agreement, e.g. registry verification and authentication of registrants, mandatory child protection labeling and monitoring, and funding of IFFOR.
- The new certification is narrowly limited to Specification 11, Section 4 and does NOT include: registry verification and authentication of registrants, mandatory child protection labeling and monitoring, and funding of IFFOR.

Dangerous ICANN Precedent

- ICANN Org appears to be giving ICM Registry a “get out of jail free” card by excusing previous non-compliance with a new registry agreement that removes the original terms of non-compliance.
- Erodes the Community’s trust in ICANN Compliance.
- What precedent does it set for ICANN to waive Specification 12 requirements in failed Community Applications, e.g. .MUSIC
- What precedent does it set for other Registry Operators to amend Specifications 11 and 12 at the time of renewal, e.g. could Amazon unilaterally amend its Specification 11?
- What faith can the community have in future Public Interest Commitments (PICs) and Registry Voluntary Commitments (RVCs).

Fairness Problem

- ICM Registry was only permitted to participate in the 2004 round under the auspices of a clearly defined community.
- This provided ICM Registry with a commercial first-mover advantage against other TLD applicants who had to wait until 2012.
- ICM Registry is now seeking to enter into a baseline registry agreement almost identical to the 2012 without any of the baggage (legal and operational costs) that it originally allowed it to be granted the TLD in the first place.

When in Doubt?

- Appendix S, Part 1 states in relevant part:

In the event Registry Operator proposes to modify the Charter, **Registry Operator shall bear the burden of demonstrating that such modification is consistent with the application for the sTLD submitted by ICM Registry in March 2004**, as amended, and any such modification shall be subject to approval by ICANN.

- **ICM Registry has NOT MEET ITS BURDEN**