

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

29-Apr-2024

Comment of the ICANN Business Constituency (BC)

This document is submitted by the Business Constituency (BC) regarding the [Proposed Renewal of the Registry Agreement for the .XXX top-level domain \(TLD\)](#), which closes April 29, 2024.

The BC is very concerned about certain aspects of the proposal:

- 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.
- 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.
- The .XXX proposal suggests removing the accountability created through a non-profit organization (International Foundation for Online Responsibility) that sponsored the application. The Registry committed to a board, ombudsman, and the operation of policy making committees. 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.
- 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.
 - The application contained a commitment to use a portion of the registration fees (\$10) received to issue grants related to its mission, which could have gone to child protection agencies, anti-child trafficking or free speech causes.
 - In lieu of IFOR, 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.
- If the proposal is accepted, the BC understands that .XXX would no longer be subject to the registry restrictions that originally limited its registrations to adult/porn domain names. This would create additional avenues for abuse of brands since the association of .XXX to adult and potentially increase the amount of cybersquatting, fraud & DNS abuse targeting major brands. While there are some rights protection mechanisms proposed, these are insufficient to meet the levels of abuse seen today.
- 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.

- 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.

This comment was drafted by Margie Milam, and was approved in accord with our Charter.