

From: John Jeffrey
Sent: Thursday, February 10, 2011 1:08 AM
To: Heather.Dryden
Cc: Rod Beckstrom; Peter.DengateThrush; Amy Stathos
Subject: ICM Consultation Resolution

Heather Dryden,
Chair, Governmental Advisory Committee, ICANN

Dear Heather:

As you know, during the recent ICANN Board Meeting, the ICANN Board of Directors passed the following resolution relating to the application by ICM for the sponsored gTLD .XXX. The Preliminary Report of this meeting is set out at (<http://www.icann.org/en/minutes/prelim-report-25jan11-en.htm>).

Whereas, at its meeting in Cartagena, Colombia, the Board noted its agreement with the staff's assessment of potential conflicts with GAC advice if the Board proceeds with its determination to enter a registry agreement with ICM Registry for the .XXX sTLD, and invoked the GAC consultation process. See <http://www.icann.org/en/minutes/resolutions-10dec10-en.htm#4>.

Whereas, during the meeting in Cartagena, the GAC sought affirmative statements from the Board on its positions on ICM-related items.

Whereas, in an attempt to make a future consultation with the GAC as productive as possible, the Board position on all items of GAC advice are clearly set forth in an attached document.

RESOLVED (2011.01.25.28), the Board directs staff to provide the GAC with the document setting forth the full Board position on items of GAC advice. The Board positions set forth correspond to the items identified for consultation at the Board's 28 October 2010 meeting.

RESOLVED (2011.01.25.29), the ICANN Board hereby establishes that the consultation on ICM as triggered in Cartagena and as provided for in ICANN Bylaws section Article XI, Section 2, Paragraph 1(j), shall take place no later than Thursday, 17 March 2011.

In furtherance of the Board's direction, attached please find the paper referenced in resolution 2011.01.25.28 above. Also attached for your review and ease of reference is a chart that lays out much of what is in the paper, although the paper has a bit more elaboration. Please do not hesitate to contact me if you have any questions.

Best regards,
John Jeffrey
General Counsel & Secretary
ICANN

To: The Governmental Advisory Committee

From: ICANN Board of Directors

Date: Approved - January 2010 Board Meeting

Subject: ICANN Board position on Meeting GAC Advice on ICM's Application for the .XXX sTLD

In Cartagena, the Board noted that it agrees with the staff's assessment of potential conflicts with GAC advice if the Board proceeds with its determination to enter a registry agreement with ICM Registry, and invoked the GAC consultation process. *See* <http://www.icann.org/en/minutes/resolutions-10dec10-en.htm#4>. The Board directed staff to communicate the Board's determination to the GAC. On 25 January 2011, the Board approved this document setting out the Board's positions, and directed staff to provide the document to the GAC. The Board positions are consistent with the attached chart, previously provided after approval by the Board on 28 October 2010.

As identified in the GAC's Cartagena Communiqué, the GAC notes that the position stated in the Wellington Communiqué "represents consensus GAC advice and still applies." GAC Communiqué – Cartagena, at http://gac.icann.org/system/files/Cartagena_Communique.pdf. For the sake of completeness, the Board addresses GAC statements arising out of the Wellington Communiqué as well as three other documents: (1) a [2 February 2007 Letter](#) from the Chair and Chair-Elect of the GAC to the Chair of the ICANN Board; (2) the [Lisbon Communiqué](#); and (3) a [4 August 2010 Letter](#) from the Chair of the GAC to the Chair of the ICANN Board.

1. Areas of Potential Inconsistency with GAC Advice

The Board previously identified three pieces of GAC advice with which entering a Registry Agreement may be inconsistent:

a. From the Wellington Communiqué, the GAC’s statement:

“[S]everal members of the GAC are emphatically opposed from a public policy perspective to the introduction of a .xxx sTLD.” This statement was reiterated in a 3 February 2007 letter from the GAC Chair.

b. From the Lisbon Communiqué:

“The GAC also calls the Board’s attention to the comment from the Government of Canada to the ICANN online Public Forum and expresses concern that, with the revised proposed ICANN-ICM Registry Agreement, the Corporation could be moving towards assuming an ongoing management and oversight role regarding Internet content, which would be inconsistent with its technical mandate.”

c. From the 4 August 2010 letter from the Chair of the GAC:

“The GAC therefore recommends that community-wide discussions be facilitated by ICANN in order to ensure that an effective objections procedure be developed that both recognizes the relevance of national laws and effectively addresses strings that raise national, cultural, geographic, religious and/or linguistic sensitivities or objections that could result in intractable disputes. These objection procedures should apply to all pending and future TLDs.”

2. Board Positions on Each Potentially Inconsistent Item:

a. GAC Member Opposition, stated in the Wellington Communiqué and 2 February 2007 letter.

The Board requests clarification from the GAC as what constitutes GAC advice for the purpose of determining whether ICANN Board action would be consistent with GAC advice. In the event that the GAC asserts that a reported position of “several members of the GAC” is GAC advice on public policy matters, then entering into a Registry Agreement with ICM would be inconsistent with the opposition to the introduction of the .XXX sTLD, and the ICANN Board/GAC consultation should address this topic.

b. ICANN as Content Enforcer, raised in the Lisbon Communiqué.

The concern of ICANN moving towards assuming an ongoing management and oversight role regarding Internet content inconsistent with its technical mandate is mitigated through some of the provisions of the ICM Registry Agreement and Due Diligence Documentation.

The ICM Compliance Reporting System includes many provisions regarding ICM's obligations for monitoring and content enforcement within the .XXX sTLD. *See* <http://www.icann.org/en/tlds/agreements/xxx/appendix-c-compliance-reporting-system-26jul10-en.pdf>. ICM's agreement with the Sponsoring Organization for the .XXX, IFFOR, includes obligations for IFFOR to contract with third party vendors to establish monitoring programs regarding registrant compliance with the sTLD policies. ICM/IFFOR Agreement at Section II.9 (page 4). ICM commits to fund these activities through a US\$10/registration payment to IFFOR. ICM/IFFOR Agreement at Section I.1. *See* <http://www.icann.org/en/tlds/agreements/xxx/iffor-sponsoring-organization-agreement-26jul10-en.pdf>. As noted by ICM in the materials it provided to the Board in advance of the 28 October 2010 meeting, "the Registry Agreement no longer contains the provisions that authorized ICANN's review and ability to negotiate IFFOR policies", removing ICANN's involvement from setting content-related policies. *See* 28 October 2010 Board Briefing Materials, Book 2, at page 178.

The possibility remains that ICANN may be required to take contractual compliance action against ICM for content-related matters that also result in violations of the Registry Agreement. This risk is not unique to the .XXX sTLD. In addition, as with other sTLDs, if the .XXX sTLD Registry is delegated, registrants and others will likely turn to ICANN for assistance with content-related issues. ICANN cannot stop such requests for content oversight to occur, though the revised terms of the proposed Registry Agreement make the viability of those requests less likely than in prior iterations of the proposed Registry Agreement. As the Board cannot determine that entering into the Registry Agreement is fully consistent with this GAC advice, the ICANN Board and the GAC may benefit from further discussion of this potential issue.

c. Creation of Objection Mechanism, Requested in the 4 August 2010 letter.

The ICANN Board seeks clarification from the GAC as to whether the statement regarding the creation of objection mechanisms in “pending and future TLDs” is providing GAC advice on entering the .XXX Registry Agreement. If this 4 August 2010 statement constitutes GAC advice on .XXX, the Board acknowledges that entering into a Registry Agreement with ICM would not be consistent with this advice.

There are no objection procedures in place to address the possibility that the .XXX string may raise national, cultural, geographic, religious and/or linguistic sensitivities or objections.¹ The GAC’s contemplated objection mechanism was not included in the Request for Proposals for the sTLD program when it was initiated in 2004. Outside of the public comment periods, there was no formalized string objection process within the 2004 sTLD RFP process when ICM applied for the .XXX sTLD. Materials relating to the sTLD RFP are available from <http://www.icann.org/en/tlds/stld-apps-19mar04/>. The imposition of an objection mechanism for the evaluation of the .XXX string would therefore revise the sTLD process, an outcome that should be avoided.

As the GAC is aware, ICM was successful in arguing to an Independent Review Panel that ICANN did not act consistently with the documented sTLD process when the Board in 2007 reconsidered a 2005 decision, which the Panel determined the Board had already made, that the sponsorship criteria was met. *See* the Panel’s Declaration, at <http://www.icann.org/en/irp/icm-v-icann/irp-panel-declaration-19feb10-en.pdf>.

Similarly, the creation of a string objection process nearly seven years after ICM applied for the .XXX sTLD, and the use of that process to evaluate ICM’s application today, would result in an improper modification of process and raise the possibility of challenge to such actions.

¹ ICANN has been dealing with this issue within the New gTLD Program, however that work remains separate from the consideration of the .XXX sTLD, which is not subject to the timing or the requirements of the New gTLD program.

3. Areas where the Board considers entering a Registry Agreement to be consistent with GAC Advice.

For the benefit of the Board and GAC, the Board sets forth the basis for its determination that four items of advice arising out of the Wellington Communiqué are consistent with the Board's determination that it intends to enter a registry agreement with ICM.

In the Wellington Communiqué, the GAC identified four specific public policy aspects to be included in the proposed Registry Agreement, and requested information on the degree the .XXX Registry Agreement would address those areas. The Wellington Communiqué stated that a Registry Agreement must include "enforceable provisions covering all of ICM Registry's commitments" that:

"Take appropriate measures to restrict access to illegal and offensive content;"

"Support the development of tools and programs to protect vulnerable members of the community;"

"Maintain accurate details of registrants and assist law enforcement agencies to identify and contact the owners of particular websites, if need be;" and

"Act to ensure the protection of intellectual property and trademark rights, personal names, country names, names of historical, cultural and religious significance and names of geographic identifiers drawing on best practices in the development of registration and eligibility rules."

The Board considers that each of these four aspects are appropriately addressed within the Proposed Registry Agreement, and provides detailed discussion below. The discussion below also meets the GAC's request for "[c]onfirmation from ICANN that the proposed Agreement would include enforceable provisions covering all of ICM Registry's commitments." *See* Wellington Communiqué.

a. The Registry Agreement includes appropriate measures to restrict access to illegal and offensive content.

The Board considers that the proposed Registry Agreement contains terms that are appropriate to restrict access to illegal and offensive content. The Registry Agreement Terms are set forth in Appendix S to the Registry Agreement, available at <http://www.icann.org/en/tlds/agreements/xxx/proposed-xxx-agmt-appendix-s-clean-23aug10-en.pdf>. Some of the terms the Board considered to determine this item was met include:

Part 1.2, obligating ICM to “promote the development and adoption of responsible business practices designed to combat child pornography, facilitate user choice and parental control of access to content.”

Part 5, at page 9 of the Appendix, provides a description of the registrar selection process, requiring each registrar to demonstrate “understanding of the principles and intentions underlying the .xxx registration policies” (Item II); “willingness and ability to propagate and enforce sTLD policies . . . in accordance with policies and procedures prescribed by Registry Operator” (Item IV); and “demonstrated systems designed to avoid submission of clearly inappropriate applicants” (Item VII).

Attachment 1 to the Appendix, at page 20, includes a product listing introducing “.xxxlock”, a “service intend[ed] to provide registrants with the ability to prevent modifications, transfers, or deletions of domain names without explicit permission from the registrant. The service’s main purposes are to prevent malicious domain hijacking and domain transfer errors.” The anticipated protections against malicious conduct reduce the risk of domain name hijacking, which could result in posting of illegal or offensive content.

Attachment 1 to the Appendix, at page 21, also includes a specification for offering of digital certification services requiring registrants “to provide appropriate credentials to verify their organization and their right to use their .xxx domain name. Certificates give the end users of Web sites a higher level of trust; ensure their privacy, and provid[e] a secure mechanism for any online financial transactions.”

These terms impose a clear requirement for validation of registrants. ICM also provided information regarding the Verification System Agreement, setting out the obligation for the registrant to represent and warrant its compliance with the sponsoring organization policies and best practices, to not sell or trade the credential, as well as to maintain current contact information, and to remain subject to a disqualification policy. The registry also retains the right to freeze the use of a domain name outside of a UDRP process. The Verification System Agreement is at <http://www.icann.org/en/tlds/agreements/xxx/terms-for-verification-credentials-contract-26jul10-en.pdf>, and also includes a term that the registrant will comply with all applicable laws and regulations. The Verification System Agreement will reduce the opportunity for a .xxx domain name to be registered and then licensed or sold to a third party that will not comply with the registry policies and requirements.

Appendix S, at Attachment 1, page 20, also describes a “xxxProxy” service, a service via Authorized Proxy Agents. When a registrant opts for this service the actual verified identity of the registrant will also be stored in the registry Authentication Database.” With this requirement for authorization of proxy service providers and agreements to store the registrant identity, creates an expectation that all registrants will abide by the sTLD policies as they cannot mask their identity from the Registry.

Placing further specification regarding other types of “offensive” material would require ICANN to take a role in content management.

b. The terms of the Registry Agreement supports the development of tools and programs to protect vulnerable members of the community.

Appendix S, as cited above, includes an obligation for ICM to promote development and adoption of responsible business practices designed to combat child pornography, facilitate user choice and parental control of access to content. In addition, ICM assumes the obligation for policy making authority “relating to terms and conditions for registration in the .XXX sTLD relating to child safety and preventing child abuse images.” <http://www.icann.org/en/tlds/agreements/xxx/iffor-responsibilities-obligations-20jul10-en.pdf>. The due diligence documentation – including this identification of ICM and IFFOR Responsibilities and Obligations, demonstrates the commitment to adopting best business practices in accordance with safeguarding

children online, combating child abuse images, prohibiting misuse of personal information, ensuring clear and accurate consumer disclosures and prohibiting deceptive marketing. See <http://www.icann.org/en/tlds/agreements/xxx/iffor-responsibilities-obligations-20jul10-en.pdf>.

The Sponsoring Organization (IFFOR) will specifically assume this responsibility under its agreement with ICM, including operating to “promote the development and adoption of responsible business practices designed to combat child pornography, facilitate user choice and parental control regarding access to online adult entertainment” (page 1); and creating best practices to “safeguard children online and combat child pornography [and] implement innovative approaches to reduce the incidence of children exposed to online adult entertainment.” (Page 4.) The IFFOR/ICM Agreement is available at <http://www.icann.org/en/tlds/agreements/xxx/iffor-sponsoring-organization-agreement-26jul10-en.pdf>. Further, the IFFOR Policy Council will include a Child Protection Advocate as one of its members. <http://www.icann.org/en/tlds/agreements/xxx/appendix-d-iffor-organizational-chart-26jul10-en.pdf>.

ICM provided materials describing a robust Compliance Reporting System, under which ICM – working with IFFOR – will facilitate referral of complaints regarding child abuse images and other complaints. ICM commits to “ follow hotline and/or law enforcement direction with respect to these complaints.” The Compliance Reporting System is described at <http://www.icann.org/en/tlds/agreements/xxx/appendix-c-compliance-reporting-system-26jul10-en.pdf>.

Appendix S also includes a rapid takedown provision for use in challenging abusive registrations including unauthorized registration of personal names. The Rapid Takedown service is described at Attachment 1, page 20. The provisions of the Registry Agreement are supplemented through ICM’s Registry Policy on Preventing Abusive Registrations, available at <http://www.icann.org/en/tlds/agreements/xxx/preventing-abusive-registrations-20jul10-en.pdf>.

c. The terms of the Registry Agreement require the maintenance of accurate details of registrants and assist law enforcement agencies to identify and contact the owners of particular websites, if need be.

The Registry Agreement, at Appendix 5 (page 48), imposes Whois data availability requirements on the Registry. *See* <http://www.icann.org/en/tlds/agreements/xxx/proposed-xxx-agmt-clean-23aug10-en.pdf>. The Whois requirements are supplemented under Appendix S to the Registry Agreement. Part 6 of the Appendix, beginning at page 6, includes privacy capabilities for additional data to be associated with the registration (page 12), as well as an obligation that the Whois data will be searchable on multiple data points. The “xxxProxy” service, described above, requires that even when a registrant elects to use a privacy service, “the actual verified identity of the registrant will also be stored in the registry Authentication Database.” (Appendix S, page 20.)

ICM’s verification system, which imposes requirements on use of websites and updating of registration information, in addition to the Compliance Reporting System discussed above, provide heightened assurance regarding the availability of registrant contact information.

d. The terms of the Registry Agreement ensure the protection of intellectual property and trademark rights, personal names, country names, names of historical, cultural and religious significance and names of geographic identifiers drawing on best practices in the development of registration and eligibility rules.

The Registry Agreement contains many protections against abusive registrations that do not exist within other registries to date. ICM also propounds an ICM Registry Policy on Preventing Abusive Registrations that includes “common-law trademark claims, personal names, [and] cultural or religious terms” in the types of terms that can qualify for special protections within the Registry. This includes the creation of a mechanism whereby the GAC and/or the governments of any country or economy participating in the GAC may identify for reservation names that match words of cultural and/or

religious significance. See <http://www.icann.org/en/tlds/agreements/xxx/preventing-abusive-registrations-20jul10-en.pdf>.

Appendix 6 to the Registry Agreement contains a Reserved Names list, following standard Registry reservation requirements including a prohibition on two-character reservations, and the reservation of geographic and geopolitical names on the ISO 3166-1 list, in English and all related official languages. See <http://www.icann.org/en/tlds/agreements/xxx/proposed-xxx-agmt-clean-23aug10-en.pdf> at page 56.

Appendix S to the Registry Agreement contains a Start Up Trademark Opposition Procedure to allow intellectual property claimants to challenge registrations (page 19); an “IP Protect” service to allow Intellectual Property owners to designate non-resolving registrations and imposing “strict conditions regarding transfer” (page 20); and a Rapid Takedown process, “a mechanism for rapidly changing an active domain to non resolving status in the clearest of cases of trade- or service-mark abuse, or abusive registrations such as the unauthorized registration personal names, to be adjudicated by an Approved Third Party Adjudicator pending a full UDRP filing.” (Page 21.)

Finally, the Registry Agreement also specifies the applicability of ICANN consensus policies, including the UDRP. See <http://www.icann.org/en/tlds/agreements/xxx/proposed-xxx-agmt-clean-23aug10-en.pdf>, Article III, Section 3.1 (b), at page 3.

Conclusion:

For each of the four specified public policy areas that the GAC identified in the Wellington Communiqué for addressing in a .XXX sTLD Registry Agreement, the Board confirms that the proposed Registry Agreement contains terms that sufficiently address the areas. The Board identifies that, at minimum, the terms and provisions identified above from proposed Registry Agreement and the additional Due Diligence documentation provided by ICM provide sufficient support to confirm that the Board is acting consistently with the GAC advice provided through the Wellington Communiqué.

4. Additional Information Request Regarding the .XXX sTLD (not Advice)

In its 2 February 2007 letter, the GAC requested a “clear explanation of why the ICANN Board is satisfied that the .XXX application has overcome the deficiencies relating to the proposed sponsorship community.” This was a re-statement of the request made in the Wellington Communiqué for a “[w]ritten explanation of the Board decision to proceed to entry into negotiations, particularly with regard to the sponsored community and public interest criteria outlined in the sTLD selection criteria.” The question relating to the sponsorship community remained after ICANN’s President submitted two letters to the GAC Chair.

Board Response:

Though this request does not require consultation between the parties, the Board notes that in anticipation of the GAC consultation, it is beneficial for the Board and the GAC to conclude on all matters relating to the .XXX sTLD application.

In March 2007, the Board determined that ICM’s Application and the Revised Agreement failed to meet, among other things, the Sponsored Community criteria of the sTLD RFP specification. See http://www.icann.org/en/minutes/resolutions-30mar07.htm#_Toc36876524. ICM challenged that Board determination through the initiation of an Independent Review of the Board’s action, and in February of 2009, the Independent Review Panel issued findings including: (1) that the Board’s earlier 1 June 2005 resolution found that that the application of ICM Registry for the .XXX sTLD met the required sponsorship criteria; and (2) the Board’s 2007 reconsideration of that finding was not consistent with the application of neutral, objective and fair documented policy. IRP Declaration, page 70, at <http://www.icann.org/en/irp/icm-v-icann/irp-panel-declaration-19feb10-en.pdf>. In furtherance of the Board’s commitment to furthering the accountability of ICANN, on 25 June 2010 the Board determined to accept and act in accordance with the these two identified findings of the Panel. <http://www.icann.org/en/minutes/resolutions-25jun10-en.htm#5>. As a result of the Board’s decision to accept those findings, the Board is now acting under the premise that the sponsorship criteria have been met.

ICM – Chart of GAC Advice*

<u>Reference</u>	<u>Source</u>	<u>GAC Advice*</u>	<u>Relevant Registry Agreement Terms</u>	<u>Additional Discussion</u>
GAC-BD-XXX-2006-02-28-01	Wellington Communiqué	Specify how Registry Agreement will take appropriate measures to restrict access to illegal and offensive content;	Appendix S imposes many related obligations on ICM: - promote development and adoption of responsibility business practices designed to combat child pornography - a registrar selection process requiring thorough understanding of the principles of the .xxx registration policies, and willingness to enforce those policies; - specifies .xxxlock – a “locking” service aimed at preventing malicious hijacking of registrations - requires Digital Certificates to provide higher levels of trust.	There is a clear requirement for validation of registrants, as well as policies against illegal and offensive material such as child pornography. The proposed Agreement also sets out processes to reduce the chance of malicious hijacking, which could lead to the posting of illegal or offensive content. Finally, the requirement that all registrants be verified – even if a privacy service is used – creates an expectation that all registrants will abide by the sTLD policies as they cannot mask their identity from the Registry. Placing further specification regarding other types of “offensive” material would require ICANN to take a role in content management.
GAC-BD-XXX-2006-02-28-02	Wellington Communiqué	Specify how Registry Agreement will support the development of tools and programs to protect vulnerable members of the community;	Within Appendix S, there is an obligation ICM to promote development and adoption of responsible business practices designed to combat child pornography, facilitate user choice and parental control of access to content. Appendix S also includes a rapid takedown provision for	The proposed Registry Agreement, along with the documents provided in the Due Diligence phase, such as the identification of ICM and IFFOR Responsibilities and Obligations, demonstrate the commitment to adopting best business practices in accordance with safeguarding children online, combating child abuse images, prohibiting misuse of personal information, ensuring clear and accurate consumer disclosures and prohibit deceptive marketing. <i>See</i>

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<u>Reference</u>	<u>Source</u>	<u>GAC Advice*</u>	<u>Relevant Registry Agreement Terms</u>	<u>Additional Discussion</u>
			use in challenging abusive registrations including unauthorized registration of personal names.	http://www.icann.org/en/tlds/agreements/xxx/iffor-responsibilities-obligations-20jul10-en.pdf . Further, the IFFOR Policy Council will include a Child Protection Advocate as one of its members. http://www.icann.org/en/tlds/agreements/xxx/appendix-d-iffor-organizational-chart-26jul10-en.pdf . ICM has also provided documentation relating to a Compliance Reporting System to review complaints of non-compliant registrations or registrants operating in a manner that violates IFFOR policies, including special provisions regarding reports of child abuse images. Information on the Compliance Reporting System is available at http://www.icann.org/en/tlds/agreements/xxx/appendix-c-compliance-reporting-system-26jul10-en.pdf .
GAC-BD-XXX-2006-02-28-03	Wellington Communiqué	Specify how Registry Agreement will maintain accurate details of registrants and assist law enforcement agencies to identify and contact the owners of particular websites, if need be; and	The main Registry Agreement and Appendix S impose Whois data availability requirements. Under Appendix S, proxy registration will be allowed, but only pursuant to the xxxProxy service using authorized proxy agents, requiring the verified identity of registrants to be stored in the registry Authentication database. Appendix S, Part 6 also requires the creation of a	The provisions requiring verification of registrants, combined with the robust Whois searchability requirements and the limitation on using only ICM-approved proxy or privacy registration services meets the concern raised by the GAC regarding availability of registrant contact information. Further, the ICM Compliance Reporting System requires ICM to follow law enforcement direction in regards to the handling of reports of child abuse images.

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ICM – Chart of GAC Advice*

<u>Reference</u>	<u>Source</u>	<u>GAC Advice*</u>	<u>Relevant Registry Agreement Terms</u>	<u>Additional Discussion</u>
			Whois database searchable on multiple fields of data.	
GAC-BD-XXX-2006-02-28-04	Wellington Communiqué	Specify how Registry Agreement will act to ensure the protection of intellectual property and trademark rights, personal names, country names, names of historical, cultural and religious significance and names of geographic identifiers drawing on best practices in the development of registration and eligibility rules.	Appendix 6 to the Registry Agreement contains a Reserved Names list, following standard Registry reservation requirements including a prohibition on two-character reservations, and the reservation of geographic and geopolitical names on the ISO 3166-1 list, in English and all related official languages. Appendix S contains a Start Up Trademark Opposition Procedure to allow intellectual property claimants to challenge registrations; an “IP Protect” service to allow Intellectual Property owners to designate non-resolving registrations; and Rapid Takedown process to allow quick takedown of registrations in clear cases of trade or service mark abused pending a full UDRP filing. The Registry Agreement also specified the applicability of	The proposed Registry Agreement contains many protections against abusive registrations that do not exist within other registries to date. ICM also propounds an ICM Registry Policy on Preventing Abusive Registrations that includes “common-law trademark claims, personal names, [and] cultural or religious terms” in the types of terms that can qualify for special protections within the Registry. This includes the creation of a mechanism whereby the GAC and/or the governments of any country or economy participating in the GAC may identify for reservation names that match words of cultural and/or religious significance. http://www.icann.org/en/tlds/agreements/xxx/preventing-abusive-registrations-20jul10-en.pdf .

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<u>Reference</u>	<u>Source</u>	<u>GAC Advice*</u>	<u>Relevant Registry Agreement Terms</u>	<u>Additional Discussion</u>
			ICANN consensus policies, including the UDRP. (Article III, Section 3.1 (b)).	
GAC-BD-XXX-2006-02-28-05	Wellington Communiqué and 2 February 2007 letter	The Wellington Communiqué noted that several GAC members were emphatically opposed from a public policy perspective to the introduction of an .XXX sTLD, and not contingent on the specificities of the proposed agreement. The GAC member opposition was reiterated in the 2 February 2007 letter.	N/A	The question remains whether a position taken by “several members of the GAC” can be equated with GAC advice on public policy matters. If it is not GAC advice, then the concern of inconsistency diminishes.
GAC-BD-XXX-2007-03-28-01	Lisbon Communiqué	The Lisbon Communiqué stated that ICANN could be moving towards assuming an ongoing management and oversight role regarding Internet	N/A	The concern of ICANN being required to oversee content, while mitigated through the creation of the ICM Compliance Reporting System, may not be fully eliminated through the proposed Registry Agreement. There is the possibility that ICANN may be required to take compliance action against ICM for content-related matters that also result in violations of the Registry Agreement. Further, regardless of the merit of such requests, if the .XXX sTLD Registry is

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<u>Reference</u>	<u>Source</u>	<u>GAC Advice*</u>	<u>Relevant Registry Agreement Terms</u>	<u>Additional Discussion</u>
		content, which is inconsistent with its technical mandate.		delegated, registrants and others will likely turn to ICANN for assistance with content-related issues. ICANN cannot stop such requests for content oversight to occur. The ICANN Board and the GAC may benefit from further discussion of this potential issue.
GAC-BD-XXX-2010-08-04-01	4 August 2010 letter	The 4 August 2010 GAC letter called for a cross-community discussion to assist in the development of an objection procedure “that both recognizes the relevance of national laws and effectively addresses strings that raise national, cultural, geographic, religious and/or linguistic sensitivities or objections that could result in intractable disputes. These objection procedures should apply to all pending and future TLDs.”	N/A	There are no objection procedures in place or contemplated to address the possibility that the .XXX string may raise national, cultural, geographic, religious and/or linguistic sensitivities or objections. ICANN has been dealing with this issue within the New gTLD program, however that work remains separate from the consideration of the .XXX sTLD, which is not subject to the timing or the requirements of the New gTLD program. Further, outside of the public comment periods, there was no formalized string objection process within the 2004 sTLD RFP process when ICM applied for the .XXX sTLD. If the “pending” TLD refers to .XXX, the approval of the .XXX sTLD Registry Agreement without allowing for these types of objections would be inconsistent with GAC advice.

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