



# New sTLD RFP Application

**.XXX**

## Part B. Application Form

### Name and Address fields

#### Company/Organization Information

<b>Company Name</b>	ICM Registry, Inc
<b>Company Address 1</b>	1097 Jupiter Park Lane, Suite 3
<b>Company Address 2</b>	-
<b>Company City</b>	Jupiter
<b>Company State/Province</b>	Florida
<b>Company Postal Code</b>	FL 33458
<b>Company Website Address</b>	www.icmregistry.com
<b>Company Country</b>	United States

#### Sponsoring Organization Information

<b>Sponsoring Organization Name</b>	The International Foundation for Online Responsibility
<b>Sponsoring Organization Address 1</b>	Suite 2500
<b>Sponsoring Organization Address 2</b>	130 Adelaide Street West
<b>Sponsoring Organization City</b>	Toronto
<b>Sponsoring State/Province</b>	Ontario
<b>Sponsoring Organization Postal Code</b>	M5H 2M2
<b>Sponsoring Organization Country</b>	Canada
<b>Sponsoring Organization Website Address</b>	www.iffor.org

**Namestrings and Conventions**

<b>First sTLD choice:</b>	.XXX
<b>Naming Conventions:</b>	
<p>ICM Registry, Inc ('ICM') and the International Foundation for Online Responsibility ('IFFOR') conducted extensive outreach and discussion to develop a strategy for identifying a TLD string for the responsible online adult-entertainment community that would transcend geographic regions and languages while having high recognition and lasting value for both registrants and Internet users.</p> <p>Based on this research, ICM and IFFOR selected .xxx as the sole string for this application based upon its high ranking in the aforementioned criteria. Although other potential strings were considered such as .sex, .adult and .porn, the research demonstrated that these strings lacked broad geographic recognition and were perceived to be primarily Anglo-Saxon.</p> <p>Research also showed that the use of these other strings could lead to consumer confusion about the sponsored community. For example, although information on family planning, birth control, or abortion would potentially qualify for inclusion in a proposed .sex or .adult TLD, such information would not intuitively be associated with a .xxx TLD. Likewise, the adoption of a .porn would place the registry operator and ICANN in the difficult position of making the determination of what is and is not pornography. The proposed .xxx string clearly and unequivocally conveys to the Internet user that the site contains adult material of a sexual nature.</p> <p>When introducing the proposed .xxx TLD, ICM and IFFOR will abide by applicable Internet standards regarding naming and reserved names, including RFC 1034, RFC 1123, RFC 2606, and RFC 2352. Initially, ICM and IFFOR will restrict registrations in the .xxx TLD exclusively to second level domain names, i.e. .. Once its policy-development process is in place, IFFOR will consider if, and under what circumstances registrations at the third level, i.e., .. should be permitted. ICM intends to consider the implementation of such a policy, assuming it is technically feasible.</p>	

<b>Second sTLD choice:</b>	Not Applicable
<b>Naming Conventions:</b>	
Not Applicable	

<b>Third sTLD choice:</b>	Not Applicable
<b>Naming Conventions:</b>	
Not Applicable	

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**Sponsoring Organization Structure**

<p>IFFOR, a Canadian not-for-profit corporation, is the sponsoring organization for this application. IFFOR's incorporation is the result of a four-year outreach campaign to educate and mobilize the responsible online</p>
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adult-entertainment community ('Community') in connection with this initiative. To ensure openness and transparency, the bylaws of IFFOR have been modelled on ICANN's own bylaws.

#### IFFOR CHARTER

IFFOR will be the delegated policy-formulation body for the proposed TLD. In carrying out its policy formulation, it will:

- ° promote the adoption and usage of the .xxx TLD and .xxx Charter within the Community;
- ° promote the development of responsible business conduct within the Community that will be incorporated into the registrant agreement of all .xxx domain names via a Declaration of Best Business Practices;
- ° foster communication between the Community and other Internet stakeholders;
- ° promote the principles set forth in the United Nations Declaration of Human Rights related to free expression;
- ° protect the privacy and security of consenting adult consumers of online adult entertainment goods and services;
- ° promote the development of business practices to safeguard children online and combat child pornography;
- ° seek out and support informed participation in IFFOR that reflects the functional, geographic, and cultural diversity of both the Community and broader Internet stakeholders at all levels of policy-development and decision making; and
- ° employ open and transparent policy-development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure those entities most affected can assist in the policy-development process.

IFFOR has formulated a comprehensive set of bylaws, various references to which are made in this document.

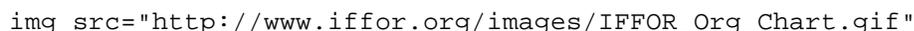
#### .xxx CHARTER

The .xxx TLD is intended primarily to serve the needs of the global online adult-entertainment community. The online adult-entertainment community is defined as those individuals, businesses, and entities that provide sexually-oriented information, services, or products intended for consenting adults or for the community itself. The terms "adult-entertainment" and "sexually-oriented" are intended to be understood broadly for a global medium, and are not to be construed as legal or regulatory categories. Rather, the referenced Community consists generally of websites that convey sexually-oriented information and for which a system of self-identification would be beneficial.

The .xxx TLD will be managed in accordance with the provisions of this Charter and the IFFOR Bylaws.

IFFOR will be responsible for establishing registration requirements for the .xxx TLD consistent with this Charter and registrations will be restricted to members of the Community as defined above.

#### IFFOR Organization structure

The image is a placeholder for the IFFOR Organization Chart, which is located at the URL [http://www.iffor.org/images/IFFOR\\_Org\\_Chart.gif](http://www.iffor.org/images/IFFOR_Org_Chart.gif).

#### I BOARD OF DIRECTORS:

IFFOR's directors will be accomplished persons of integrity and objectivity, with a demonstrated capacity for group decision-making. They must come from diverse geographic areas and understand the roles of IFFOR, ICM and the potential impact of their decisions. IFFOR's board will be comprised of 7

voting directors. IFFOR's Executive Officer will not have the right to vote. To preserve the geographic diversity of its board, directors must come from at least three of ICANN's five designated geographic regions.

IFFOR will establish four Supporting Organizations ('SO') to inform the work of its board. These are the Top-Level Domain Name SO ('TLDSO'); the Free Expression SO; the Privacy, Security and Child Advocacy SO; and the Online Adult-Entertainment SO. Each of the four SOs will nominate one board member via its Names Council.

IFFOR will also rely on a nominating committee ('NC') to identify 2 members of its board. The NC, whose members must have the same strengths of objectivity and integrity as the board members themselves, will select these candidates. Individuals serving on the NC must understand IFFOR's mission and have no commitments to the SOs. Directors must be willing to serve as volunteers, without compensation other than the reimbursement of expenses and can work and communicate in English. The final board member will be nominated by ICM

## II SUPPORTING ORGANIZATIONS

IFFOR will rely on its 4 SOs to develop and recommend policies, each within its area of expertise. The SOs will not have a formal legal structure nor are they designed to be independent entities. Instead, the SOs will facilitate an open and dynamic consensus-building process that actively encourages participation by all interested stakeholders.

The scope of each SO has been carefully composed to encourage and administer broad-based public participation in IFFOR's policy-formulation process. Each SO provides a framework for identifying policy issues and a conduit for receiving and addressing public comment.

The scope of each SO is set out in the IFFOR bylaws, and a discussion of each is provided in the next section of the RFP under 'Representation.'

## III MISSION

IFFOR adheres to the following fundamental principals:

- ° preservation and enhancement of the operational stability and reliability of the Internet;
- ° respect for creativity, expression, innovation, and the free flow of information;
- ° policy-development based on broad, informed participation of the Community, reflecting geographic and cultural diversity;
- ° reliance on open and transparent policy-development mechanisms that: (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy-development process;
- ° respect for the right of parents to select the information accessed by their children, and respect for the preference of those who, for personal, cultural, religious or other reasons seek to avoid accessing certain adult material;
- ° decision-making based on the neutral and objective application of documented policies to ensure the integrity and fairness of the decision-making process;
- ° timeliness of decision-making, balancing the need for quick action with the need to obtain informed input from those most affected; and
- ° accountability to its communities through mechanisms that enhance the organization's effectiveness.

The global online adult-entertainment industry has grown from a niche industry into a multi-billion-dollar market. IFFOR seeks to respond to this change in dynamics by promoting responsible business practices within the Community. These business practices must be informed by the views of all stakeholders, in particular by those individuals and organizations that possess expertise in safeguarding the interest of children online. In addition, IFFOR believes the

promotion of the principles set forth in the United Nations Universal Declaration of Human Rights related to free expression are important core values.

IFFOR's TLD SO role will be to develop policy for the proposed .xxx TLD, subject to adoption by the Board.

#### IV TRANSPARENCY

Like ICANN, IFFOR will operate as far as possible in an open and transparent manner, consistent with procedures designed to ensure fairness. To achieve this objective, IFFOR has elected to incorporate the following obligations into its bylaws:

- ° maintain a publicly accessible website that will contain a variety of information as set forth by the bylaws;
- ° employ a full-time officer who will serve as the manager of public participation;
- ° post notices of all meetings, agendas, minutes and preliminary reports on the publicly accessible website; and
- ° provide notice of and permit comment on policy actions.

Rather than rely primarily on costly in-person public meetings to facilitate outreach and public awareness, IFFOR intends to rely heavily on online communications technologies to achieve its goals.

#### V ACCOUNTABILITY

IFFOR will respond to the demands of the Community and the Internet as a whole in its policy-making process thus remaining representative of and responsive to the Community. ICM, through its contract with IFFOR, will implement the policies developed.

#### VI OMBUDSMAN

Like ICANN, IFFOR will rely on an Ombudsman ('OMB') to act as a neutral dispute resolution practitioner for those matters for which the provisions of more formal dispute resolution and redress procedures have not been invoked (the Reconsideration Policy and the Independent Review Policy are detailed in the IFFOR bylaws). The principal function of the OMB will be to provide an independent evaluation of complaints by members of the Community or other Internet stakeholders who believe the staff, board or a constituent body has treated them unfairly. The OMB will evaluate complaints objectively and where possible resolve complaints about unfair or inappropriate treatment by IFFOR staff, the board, or IFFOR constituent bodies, clarifying the issues and using conflict resolution tools such as negotiation or facilitation to achieve these results. To ensure the independence of the OMB, and because this position is not likely to require a full time employee, IFFOR will contract this service to a consultant.

#### VII FUNDING

IFFOR is committed to ensuring it has adequate funding under various success models to guarantee its operational independence. Therefore it will receive from ICM a fee per domain year for each .xxx domain registered. It will use the surplus, after paying expenses, to sponsor incentives for the benefit of the Community and other Internet stakeholders as determined by the Grant Advisory Committee. ICM will advance non-recourse interest-free loans to IFFOR for set up costs and to cover expenses in year 1, if required.

To ensure openness and transparency, while controlling costs, IFFOR intends to make significant use of online resource tools, such as Boardrooms.org. and other organizational solutions.

## Appropriateness of Sponsored TLD Community

### COMMUNITY TO BE SERVED

As defined before, the .xxx TLD is intended primarily to serve the needs of the global responsible online adult-entertainment community ('Community').

The online adult-entertainment community is primarily defined as those individuals, businesses, and entities that provide sexually-oriented information, services, or products intended for consenting adults or for the community itself. The terms "adult-entertainment" and "sexually-oriented" are intended to be understood broadly for a global medium, and are not to be construed as legal or regulatory categories. Rather, the referenced Community consists generally of websites that convey sexually-oriented information and for which a system of self-identification would be beneficial.

Although some individuals may have personal or moral objections to the Adult-Entertainment industry, statistics demonstrate unequivocally that sex is an integral part of the Internet. It is clear that the Community is comprised of persons and entities that have needs and interests in common, which are clearly differentiated from those of the general, global Internet community. Our research indicates there are around 100,000 individuals businesses or entities that make up the Community and that, on average, each of these manages around 10 to 20 domains.

- According to the Nielsen/NetRatings, in August 2003, over one in four Internet users in the United States (34 million) visited a pornography-related web site.

Source: Sex sells, especially to Web surfers, CNN, Jeordan Legon, December 11, 2003.

- The updated statistics for December, gave similar results with 35.4m visitors. These figures are in line with our own research that indicates around 25% of all Internet search queries are of a sexually-oriented nature.

- In 2002, Reuters Business Insight forecast an estimated US\$3.3 billion would be spent on online adult-entertainment services in 2003, making it the fastest growing segment of the adult-entertainment industry with a projected US\$4.6 billion in global revenues in 2006.

Source: Online Adult-entertainment, Reuters Business Insight - Technology and ecommerce, Authored by Datamonitor, 2002.

The impact that the online adult-entertainment industry has had on the broader adult-entertainment industry is significant. In a recent interview with Wired News ("Life, Liberty and the Pursuit of Porn," - February 19, 2004), Larry Flynt discussed the transformative impact of the Internet on the industry. According to Mr. Flynt, in the 1980's traditional publishing constituted 80% of his business, now it is just 20% with the Internet or video accounting for the other 80%.

An Associated Press article ("Porn Mag Sales Go Limp," - November 10, 2003), reported on the recent filings under Chapter 11 of the US bankruptcy code by the parent companies of Penthouse and Screw magazines. These filings underscored the importance of the online market for the industry, and demonstrate why industry members are increasingly focused on the Internet. One magazine publisher, Al Goldstien of Screw said, "We are an anachronism; we are dinosaurs; we are elephants going to the bone cemetery to die... The delivery system has changed, and we have to change with it if we want to survive." This article also referred to Professor Samir Husni, head of the magazine program at

the University of Mississippi's journalism school, who noted that several hundred new adult websites launch each month, as compared to about 30 new adult magazines for all of last year.

Today there is no one authoritative body representing the online adult industry. On the contrary, many adult webmasters are small independent or niche operators who do not actively participate in any forums. The majority of these smaller operators tend to affiliate with larger companies that provide a full range of turnkey solutions (such as content, services, transactions information, news) much of which is typically private-labelled before being presented to the consumer.

#### SUPPORT

Over the past four years, ICM has worked with the key constituents within the Community to develop support for the concept of a non-profit entity representing responsible members of the online Adult-Entertainment community. At the time of submission, many of the world's leading adult-entertainment companies have expressed support for this application. In particular, as specifically requested in the RFP, ICM has detailed letters of support from major providers in the USA, Canada, Australia, UK, and Continental Europe, expressing support for the sTLD, for the sponsoring organization and for the proposed policy-formulation process. These supporters either supply services to, or themselves manage, the majority of adult entertainment on the Internet. See Part C, Business Risks and Opportunities for further details.

Following the industry outreach that ICM undertook in 2000, it quickly became apparent that the creation of an adult-oriented TLD could in fact also establish a framework for bringing together members of communities that had traditionally existed independently and in isolation from one another (such as child advocacy, privacy, free expression). ICM also realized it was partly this failure in communication that prevented the members of the online adult-entertainment community from working together with other interested stakeholders to establish responsible business practices.

The proposed .xxx TLD deals with perhaps the largest sector of the Internet in terms of traffic and usage. It is only by establishing a workable, consensus-driven framework around the new TLD that all interested stakeholders can work together to serve the needs not only of the responsible online adult-entertainment industry but also of the Internet community as a whole.

In turn, there is a letter of support from IFFOR, as the sponsoring organization, for ICM's application.

#### BENEFITS TO THE COMMUNITY

ICM and IFFOR believe that the proposed TLD offers a number of potential opportunities to serve the unique needs of the responsible online adult-entertainment industry. Some of these potential benefits include potential defenses in domain-related litigation, enhanced acceptance by search-engines and therefore increased functionality, better opportunities to negotiate with credit card and transaction providers, and new marketing opportunities.

In terms of possible domain name related litigation, ICM and IFFOR believe that registrants may be better positioned to use an affirmative statutory defense in connection with prosecution under newly enacted US law. Under Section 108 of the Protect Act, entitled Misleading Domain Names on the Internet (aka Truth in

Domain Names), it is now a crime in the US to knowingly use a domain name to deceive a person into viewing obscenity or to knowingly using a domain name to deceive a minor into viewing material that is harmful to minors. However, Section 108 further provides that "for the purposes of this section, a domain name that includes a word or words to indicate the sexual material on the site, such as `sex' or `porn', is not misleading.

#### CONSUMERS OF ONLINE ADULT-ENTERTAINMENT SERVICES

Although many people may have a stereotypical image of the typical consumer of adult-entertainment products and services, several recent studies have revised this image. In fact, new information reveals that those individuals interested in adult-entertainment are much more mainstream than many people would likely believe. In addition, research into search engine usage has shown that over any reasonable time period, 25% of all search terms were adult related.

One of the benefits the proposed TLD will give to both providers and consumers is an environment in which responsible consenting adults can purchase adult-entertainment services online with increased confidence. Unfortunately, as with many industries, some of the online adult-entertainment community have engaged in illegal and/or questionable business practices, such as unlawful redialers, credit-card fraud, breaches of consumer privacy, email spoofing, SPAM etc. ICM and IFFOR will incorporate a best business practices provision into the registrant's domain name registration agreement and will develop compliance mechanisms to address non-adherence.

## Representation

#### IFFOR ORGANIZATION

IFFOR will rely upon a framework of Supporting Organizations (SOs) and their representative constituencies to be timely formed after the acceptance of this application.

These SOs are intended to be internal IFFOR working committees whose purpose is to take input from members of the involved communities and make policy recommendations to the IFFOR Board of Directors.

- Top-Level Domain Name Supporting Organization (TLDSO);
- Free Expression Supporting Organization (FESO);
- Privacy, Security and Child Advocacy Supporting Organization (PSCASO); and,
- Online Adult Entertainment Supporting Organization (OAESO)

IFFOR has been designed to function as a hub to bring together and foster communication between historically disparate viewpoints. Although the TLDSO is a necessary spoke in this hub, the other three Supporting Organizations will provide a unique framework for the online Adult-Entertainment industry to communicate and co-operate with the broader Internet community in order to develop responsible business practices.

#### 1. TOP-LEVEL DOMAIN NAME SUPPORTING ORGANIZATION (TLDSO)

ICANN delegated authority for policy-formulation for the .xxx TLD will be entrusted to its Top-Level Domain Name Supporting Organization (TLDSO). The key body of the TLDSO will be the Names Council which will operate in accordance with the guidelines set forth in the IFFOR bylaws. The TLDSO is modeled after the current ICANN GNSO, but is somewhat simpler, reflecting the smaller scope of its undertaking.

To incorporate the views of the relevant stakeholders, the TLDSO will seek input from the following four constituencies. These are:

- a. The Online Adult-Entertainment Constituency
- b. The Free Expression Constituency
- c. The Privacy and Security Constituency
- d. The Child Advocacy Constituency

Each constituency is recognized in IFFOR's bylaws, but it will be responsible for drafting its own charter for submission and approval to the IFFOR Board. The identified constituencies will be the primary mechanisms through which the relevant community expresses its views about policy proposals and needs for the .xxx TLD to the TLDSO. The TLDSO will consider these viewpoints and will propose and develop new policies from them.

To ensure the accountability of the bottom-up process, each Names Council representative must provide a formal account of how each constituency member voted on all issues under consideration. This formal accounting will be made part of the record and provided to IFFOR's Board to help ascertain if there is true consensus among the various stakeholders.

## 2. FREE EXPRESSION SUPPORTING ORGANIZATION (FESO)

The Free Expression Supporting Organization will advise the Board on freedom of expression and free speech issues in connection with Internet activities that fall outside the scope of the proposed TLD's delegated policy-making authority. Having this representation within the IFFOR structure benefits the Board by providing a bigger picture of the evolution of freedom of speech and expression on the Internet. Just as IFFOR believes that representation by free-expression and free-speech constituents is important in developing the proposed TLD's policy, IFFOR also believes this SO can provide a framework for these groups to engage in constructive dialogue with the broader Internet community on a much wider range of issues. Membership in FESO will be along the lines of the ICANN ALAC, where membership is primarily afforded to organizations as opposed to individuals.

## 3. PRIVACY, SECURITY AND CHILD ADVOCACY SUPPORTING ORGANIZATION (PSCASO)

The Privacy, Security & Child Advocacy Supporting Organization will advise the Board on issues involving the promotion of child online safety that fall outside the scope of the delegated policy-making authority of the .xxx TLD. Having this representation within the IFFOR structure is beneficial, as it provides the IFFOR Board with a clearer picture of the evolving issues threatening children's safety, as well as overall security and privacy online. Just as IFFOR believes representation by child-advocacy groups is important in developing the proposed TLD's policy, IFFOR also believes it can provide a framework for child-advocacy groups to engage in constructive dialogue with the Adult-Entertainment industry and the broader Internet community on a much wider range of issues. Membership in PSCSO will be along the lines of the ICANN ALAC, where membership is primarily afforded to organizations as opposed to individuals.

## IV. ONLINE ADULT ENTERTAINMENT SUPPORTING ORGANIZATION (OAESO)

The Online Adult Entertainment Supporting Organization will advise the Board on developments within the broader adult industry that fall outside the scope of the delegated policy-making authority of the .xxx TLD. Having this

representation within the IFFOR structure is beneficial as it provides the IFFOR Board a broader picture of developments with the adult industry. Just as IFFOR believes representation by the online Adult-Entertainment industry is important in developing the proposed TLD's policy, IFFOR also believes it can provide a framework for the online adult-entertainment industry to engage in constructive dialogue with the broader Internet community on a much wider range of issues. Membership in the organization will be open to individuals, businesses and organizations.

## Openness and Transparency

IFFOR plans to maintain a publicly accessible Internet World Wide Web site (the "Website"), which may include, among other things:

(i) a calendar of scheduled meetings of the Board, Supporting Organizations, and Committees;

(ii) a docket of all pending policy-development matters, including their schedule and current status;

(iii) specific meeting notices and agendas as described below;

(iv) information on IFFOR's budget, annual audit, financial contributors and the amount of their contributions, and related matters;

(v) information about the availability of accountability mechanisms, including reconsideration, independent review, and Ombudsman activities, as well as information about the outcome of specific requests and complaints invoking these mechanisms;

(vi) announcements about IFFOR's activities of interest to significant segments of the responsible online adult material and service provider community, as well as broader Internet stakeholder community;

(vii) comments received from the community on policies being developed and other matters;

(viii) information about IFFOR's public forums; and

(ix) other information of interest to the IFFOR community.

## Initial Directors, Officers, and Other Staff

### 1. IFFOR BOARD OF DIRECTORS

In accordance with IFFOR's its bylaws, there are currently three initial IFFOR Board Directors, Stuart Lawley (Chairman), Ronald Appleby, QC and Timothy Denton ("the Interim Board"). Once this application is approved, the Interim Board will then fill the remaining seats of the initial board with leading advocates from the appropriate constituencies, bringing the number of directors on the Board to seven.

Stuart Lawley is an experienced Chairman and Chief Executive, who has developed and successfully managed a number of UK businesses in office technology and the Internet. He was Chief Executive of Eurofax Ltd and Alto Group plc and Chairman of Oneview.net plc (all UK Companies). He is an investor in and Chairman of Definitive Electronic Solutions Inc. He has a BSc in Engineering from the University of London, England.

Ronald Appleby is a partner in the law firm of Robins Appleby and Taub. Mr. Appleby is an honors graduate of Osgoode Hall Law School, where he served as an editor of the Osgoode Hall Law Journal. He attained first class honors in four consecutive years at the University of Toronto, from which he holds a Bachelor of Commerce degree.

Mr. Appleby was called to the Bar of Ontario with first class honors in March 1970. He has been a partner in the firm since 1973 and was appointed Queen's Counsel in 1982.

Timothy Denton is a consultant in private practice specializing in telecommunications and Internet policy. He is a consultant to the Canadian Internet Registration Authority ("CIRA"). He has a Bachelor of Civil Law (BCL) from McGill University and joined the Bar of Quebec in 1975. His undergraduate degree in political science and philosophy is also from McGill.

Mr. Appleby and Mr. Denton have agreed to step down within 30 days after ICANN accreditation to make way for to make way for appointments from the nominating committee.

2. IFFOR OFFICER

IFFOR will have an Executive Officer who will be its only Officer.

3. IFFOR STAFF

IFFOR will also have a Manager of Public Participation, an Ombudsman and a full time administrator. IFFOR has reviewed a number of individuals for the roles, but no appointments will be made until the outcome of this proposal has been determined.

## **Selection of Directors, Officers, Members, Staff**

The guidelines regarding the qualifications and selection of Directors are set forth in the IFFOR bylaws.

A summary of the basic provisions is as follows:

1. COMPOSITION OF THE BOARD

The IFFOR Board of Directors ("Board") shall consist of seven (7) voting members ("Directors").

2. DIRECTORS AND THEIR SELECTION

a. There will be an initial board which will consist of the Chairman and six (6) Directors appointed by the Interim Board. Each Director will resign and a new Director will be appointed according to the transition plan below.

b. The regular term of Seat 1 will begin at the conclusion of the IFFOR's annual meeting in 2005 and each IFFOR annual meeting every fourth year after 2005;

c. The regular term of Seat 2 shall begin at the conclusion of the IFFOR's annual meeting in 2006 and each IFFOR annual meeting every fourth year after 2006;

d. The regular term of Seat 3 shall begin on the day six months after the conclusion of IFFOR's annual meeting in 2005 and each IFFOR annual meeting every fourth year after 2005;

- e. The regular term of Seat 4 shall begin on the day six months after the conclusion of IFFOR's annual meeting in 2006 and each IFFOR annual meeting every fourth year after 2006;
- f. The regular term of Seat 5 shall begin on the day six months after the conclusion of IFFOR's annual meeting in 2007 and each IFFOR annual meeting every fourth year after 2007;
- g. The regular term of Seat 6 shall begin on the day six months after the conclusion of IFFOR's annual meeting in 2008 and each IFFOR annual meeting every fourth year after 2008; and
- h. The regular terms of Seat 7 shall begin on the day six months after the conclusion of IFFOR's annual meeting in 2004 and each IFFOR annual meeting every fourth year after 2004.

- ° Seats 1 and 2 are appointed by the nominating committee.
- ° Seat 3 is appointed by the TLDSO.
- ° Seat 4 is appointed by the FESO.
- ° Seat 5 is appointed by the PSCASO.
- ° Seat 6 is appointed by the OAESO.
- ° Seat 7 is appointed by ICM.

### 3. QUALIFICATIONS OF DIRECTORS

In carrying out their responsibilities to fill the Seats, the Nominating Committee and the Supporting Organizations, as the case may be, shall seek to ensure that the IFFOR Board is composed of members who in the aggregate display diversity in geography, culture, skills, experience, and perspective. Nominees for directorship must have an understanding of (among other things) IFFOR's mission and preferably have some familiarity with the online adult-entertainment industry and operation of the Internet Domain Name System (DNS). They must be willing to serve as volunteers, without compensation other than the reimbursement of certain expenses. No person who serves as a Director in any capacity on any Supporting Organization Council will be permitted to serve on the Board at the same time. The full Bylaws specify certain other qualifications relating, among other things, to international representation on the Board.

### 4. ELECTION OF CHAIRMAN

The Board will make an annual election of a Chairman from among the Directors.

### 5. DIRECTORS' DUTIES

Directors will be required to act in what they reasonably believe are the best interests of IFFOR and not as representatives of the entity that selected them, their employers, any other organizations or constituencies, or in their own interests.

### 6. TERMS OF DIRECTORS

The term of each director will be for four (4) years except for the Initial Board of directors who will serve a shorter term as set out in the IFFOR bylaws.

### 7. RESIGNATION OF A DIRECTOR

Any Director may resign at any time, either by oral tender of resignation at any meeting of the Board (followed by prompt written notice to the Secretary of IFFOR) or by giving written notice thereof to IFFOR, such resignation shall

take effect at the time specified, and the acceptance of such resignation shall not be necessary to make it effective.

8. REMOVAL OF A DIRECTOR

Any Director may be removed, following notice to that Director and, if selected by a Supporting Organization, to that Supporting Organization, by a three-fourths (3/4) majority vote of all Directors (not including the director the subject of the removal action).

9. VACANCIES

Any vacancy occurring on the Board of Directors shall be filled by the Nominating Committee, unless that Director was selected by a Supporting Organization, in which case that vacancy shall be filled by that Supporting Organization. A Director selected to fill a vacancy on the Board shall serve for the unexpired term of his or her predecessor in office. No reduction of the authorized number of Directors shall have the effect of removing a Director prior to the expiration of the Director's term of office.

10. OFFICERS

The IFFOR bylaws set forth the provisions for the qualifications, election, and removal of officers. IFFOR will appoint its Executive Officer within 30 days of acceptance of this proposal. IFFOR has identified a number of suitable candidates including Mr. Timothy Denton who is currently a director on the Interim Board.

11. STAFF

IFFOR will appoint its staff within 60 days of the acceptance of this proposal. With regard to the hiring of staff, IFFOR will comply with all applicable laws and will prohibit discrimination in all its programs and activities on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, marital or family status.

## Meetings and Communication

The guidelines regarding meetings and communications are set forth in the IFFOR bylaws.

A summary of the basic provisions is as follows:

1. ANNUAL, REGULAR AND SPECIAL MEETINGS

Annual meetings of IFFOR shall be held for the purpose of electing Officers and re-electing Directors and for the transaction of such other business as may come before the meeting. Each annual meeting shall be held during the fourth quarter of the calendar year. Regular meetings of IFFOR shall be held on dates to be determined by the Board. Special meetings of the Board may be called at the request of one-quarter (1/4) of the members of the Board or by the Chairman of the Board or the Executive Director. All meetings shall be held at the principal office of the IFFOR, or any other appropriate place of the Board's choosing.

2. OTHER PROVISIONS CONCERNING MEETINGS

The IFFOR Bylaws set out various provisions relating to action by telephone meetings; action without meeting if all of the Directors entitled to vote

thereat shall individually or collectively consent in writing to such action; and notice of Meetings.

3. MINUTES

All minutes of meetings of the Board and Supporting Organizations (and any councils thereof) will be approved promptly by the originating body and provided to the IFFOR Secretary for posting on the publicly accessible website no later than seven (7) days after each meeting.

**Fiscal Information**

IFFOR will have an Executive Officer and 3 staff. The combined salary, benefits and employment taxes of these are projected be US\$190,000.

IFFOR will receive a fee per domain name year from ICM. ICM has produced a range of plans to illustrate its proposed financial performance. Based on ICM's 'Medium Plan' (refer to Parts 'C' and 'D' of this application), which assumes 120,000 domain names under management at the end of a five (5) year period, this is an extract of IFFOR's projected cash flows.

US\$ (in 000s)	Pre-IP -----	Yr. 1 -----	Yr. 2 -----	Yr. 3 -----
Income	0	696	721	1094
Expenses	90	481	495	510
Net Operating	(90)	215	226	584
Capital Expenditures	40	0	0	0
Cash Flow	(130)	215	226	584
Capital Injection	150			

Cash flow continues to improve after year 3.

**Indemnification from Liability**

ICM and IFFOR propose several mechanisms to limit the liability of each organizations directors and staff. The first mechanism is contained in the bylaws of each organization. IFFOR sponsoring bylaws state that IFFOR will indemnify each of its agents against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact that any such person is or was an agent of IFFOR, provided that the indemnified person's acts were done in good faith and in a manner that the indemnified person reasonably believed to be in IFFOR's best interests and not criminal. For purposes of this Article, an "agent" of IFFOR includes any person who is or was a Director, Officer, employee, or any other agent of IFFOR (including a member of any Supporting Organization, any Advisory Committee, the Nominating Committee, any other IFFOR committee) acting within the scope of his or her responsibility; or who is or was serving at the request of IFFOR as a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise.

The second mechanism will be in the Registry-Registrar Agreement that each ICANN accredited must enter into with the registry operator prior to being permitted to provide domain name registration services in the .xxx TLD. Afiliias' Registry-Registrar agreement, which ICM and IFFOR will incorporate into their registry registrar agreement, require registrars to indemnify the

Registry Operator and its employees, directors, officers, representatives, agents and affiliates, against any claim, suit, action, or other proceeding brought against the Registry Operator or any affiliate of the Registry Operator based on or arising from any claim or alleged claim: (i) relating to any product or service of the Registrar; (ii) relating to any agreement, including the Registrar's dispute policy, with any Registered Name Holder or the Registrar; or (iii) relating to the Registrar's domain name registration business, including, but not limited to, the Registrar's advertising, domain name application process, systems and other processes, fees charged, billing practices and customer service.

The final mechanism will be incorporated into the domain name registration agreement that every domain name registrant must consent to prior to being permitted to registering a domain name. In those agreements, registrants must agree to indemnify, the Registry Operator, and its directors, officers, employees and agents from and against any and all claims, damages, liabilities, costs and expenses arising out of or relating to the registrant's domain name registration. In addition, registrants will be required to release the registry operator, ICM, and IFFOR from liability for actions taken to comply with ICANN policies or in exercise of the authority delegated by ICANN.

### **Proposed Extent of Policy-Making Authority**

IFFOR is seeking a limited and qualified scope of policy-making authority in connection with the operation of the TLD. IFFOR seeks delegation primarily in connection with the terms and conditions for registering a domain name in the proposed top-level domain. During ICM's four-year outreach and education process, responsible online adult-entertainment companies have expressed their concern about a for-profit company or other non-interested third-parties being able to potentially impose onerous terms and conditions via the registration agreement without their voice being properly heard.

For this reason, IFFOR was created as a not-for-profit, independent entity to serve as the policy-making body for the TLD. IFFOR will enter into a contract with ICM under which ICM will be bound to implement policy dictated by IFFOR. This separation of powers, along with the online adult-entertainment community's ability to directly participate in the policy-development process supports ICM and IFFOR's application as a sponsored TLD. However, based upon our research there is an increased chance of quick adoption by the community via a sponsored model that takes into account a broader range of voices, viewpoints, and concerns.

The limited scope of policy-making delegation that IFFOR is seeking is in part because of the successful efforts of the ICANN GNSO with such policy initiatives as the UDRP, redemption grace period and restriction of the marketing use of Whois data. These positive industry developments have made the proposed .xxx TLD more useful to both registrants and users. Moreover, given that ICM will be contracting with Afiliias to provide key registry infrastructure backend services, ICM and IFFOR believe that similar future policy developments proposed by the ICANN GNSO would in most instances be incorporated into operation of the proposed TLD.

IFFOR is also seeking delegated policy in respect of Whois.

An overview of IFFOR's policy-development process (PDP) is set out in its bylaws and summarized below in the section on Policy-Making Process, and mirrors in large part the PDP currently employed by the ICANN GNSO. IFFOR PDP will require outreach to the impacted constituencies, potential appointment of

outside advisors, as well as public notification of the entire process, which is based on upon the ICANN model. IFFOR has accounted for more extended deliberation periods, however, and has enhanced transparency by requiring information on how each constituency member votes on all issues under consideration.

IFFOR proposes parallel processes for evaluating and implementing consensus policy created by both ICANN and within IFFOR. Those policies that apply to .xxx by their terms will, of course, be implemented. With respect to policies applicable only to gTLDs, however, IFFOR expects to consider adoption of those policies as well, following consultation with the TLDSO constituencies.

The other parallel policy implementation process involves consensus recommendations adopted by the IFFOR Board from the TLDSO. IFFOR is prepared to incorporate a thirty day "quick look" opportunity for ICANN, under which ICANN staff would be given thirty-days to review any IFFOR consensus policy from the TLDSO prior to implementation. If the ICANN staff takes no action, the policy would be implemented. However, if the ICANN staff objects or raises questions, IFFOR and ICANN staff will engage in discussions to try to resolve any misunderstandings or differences of opinion. If the parties are unable to reach a mutual agreement, the matter will be resolved in accordance with the dispute resolution procedures established in the contract between ICANN and ICM.

The above referenced processes provide a series of checks and balances to ensure that both the responsible online adult-entertainment community and other potentially impacted Internet stakeholders have the opportunity to participate through the various constituencies within the TLDSO. The narrow area of policy-making authority that IFFOR seeks delegation, coupled with the above safeguards ensures that there can be no abuse of policy-making authority by the sponsoring organization or the registry operator.

## **Policy-Making Process**

IFFOR (and ICM insofar as its role is to implement IFFOR policy) propose a comprehensive and overlapping policy-making process in connection with the delegated authority for the proposed TLD. This process will primarily involve the TLDSO operating in accordance with the guidelines set out in the IFFOR bylaws. IFFOR will also utilize the parallel policy-development process that will seek to incorporate the consensus policy recommendations of both the ICANN GNSO and the IFFOR TLDSO.

The mechanisms for allowing reconsideration and review of the proposed or adopted policies include appointment of an Ombudsman, and the creation of a reconsideration committee, and the independent review panel as described in the Bylaws.

A summary of the basic policy making process is as follows:

### **1. INITIATION OF POLICY-DEVELOPMENT PROCEDURE ('PDP')**

An issue may be raised for consideration as part of the policy-development process ('PDP') by any of the Board, the TLDSO Council, or any advisory committee. After receiving notice of such an issue having been raised, a designated employee of IFFOR (the 'Staff Manager') will create a report (an 'Issue Report'), which, along with his own recommendations and the opinion of legal counsel for IFFOR (regarding whether the initiation of the PDP is properly within the scope of the IFFOR policy process and the TLDSO) will be distributed to the TLDSO Council for a vote on whether to initiate the PDP.

## 2. PUBLIC NOTIFICATION

After initiation of each PDP, IFFOR will post a notification of it to the Website. A public comment period will then commence. The Staff Manager will review the public comments and incorporate them into a report (the 'Public Comment Report') The Public Comment Report will be included in the Preliminary Task Force Report or the Initial Council Report, as applicable.

## 3. TASK FORCES

In considering proposed policy developments, the Council may decide to appoint task forces, consisting of representatives appointed by each of the constituencies of the TLDSO, to assist it in making investigations. The task forces will not have any formal decision-making authority, and terms of reference for each task force will be set by the Council. One of the tasks of the task force representatives will be to ascertain the position of his or her constituency, and, in addition, the task force may solicit the opinions of outside advisors, experts, or other members of the public.

After due deliberation, the chair of the task force will be required to submit a preliminary report of findings (a 'Preliminary Task Force Report') in a prescribed form, to the full task force. The Preliminary Task Force Report must contain the views of the TLDSO constituencies.

After a subsequent, and final, task force meeting, the chair of the task force and a designated employee of IFFOR will create the final task force report (in a prescribed form) and post it on the Website.

## 4. PROCEDURE IF NO TASK FORCE IS FORMED

If the Council decides not to convene a task force, it will request that each constituency appoint a representative to solicit the constituency's views on the issue, and submit a constituency statement to the Staff Manager. Again, the Staff Manager will be required to create a report (the 'Initial Council Report') in a prescribed form, and post it on the Website.

## 5. Public Comments to the Task Force Report or Initial Report

After reports are posted to the Website, there will be a suitable public comment period during which any individual or organization may submit comments. At the end of the public comment period, the Staff Manager will be responsible for reviewing the comments received and adding those deemed by him to be appropriate for inclusion in his Final Report, which the staff Manager will then be responsible submitting to the Council chair.

## 6. COUNCIL DELIBERATION AND REPORT TO BOARD

Upon receipt of a Final Report, the Council chair will (i) distribute the Final Report to all Council members; and (ii) call for a Council meeting. The deliberation process will culminate in a formal Council meeting at which the Council will work towards achieving the required 2/3 majority vote on the issue, and thereafter to present a report (in prescribed form) to the Board (the 'Board Report').

## 7. BOARD VOTE

As soon as possible after receipt of the Board Report, the Board will meet to discuss the Council recommendation. In the event that the Council reached a 2/3

majority vote on the issue, the Board shall adopt the policy according to the Council recommendation unless it votes against adoption by the same majority, in which case it must state the reasons for its determination in a report to the Council. In the event that a convergence in the views of the Council and the Board still remains, there is a procedure for more deliberation to take place, at the conclusion of which the Board will publish a tentative decision, allowing for a further period of public comment prior to a final decision by the Board.

#### 8. IMPLEMENTATION OF THE POLICY

Upon a final decision of the Board, the Board shall, as appropriate, give authorization or direction to the IFFOR staff to take all necessary steps to implement the policy.

Articles or certificate of incorporation, organization, association are all available and will be presented to ICANN on request.

IFFOR's Bylaws and articles are available and will be presented to ICANN upon request.

ICM's Bylaws, articles and shareholders agreement are available and will be presented to ICANN upon request.

Information on IFFOR and ICM, including business location addresses, legal status of each organization and the laws under which each organized are available to ICANN on request.

The list of persons presently on the supervising board of directors of the organization, or those initially on the board of directors and the proposed mechanism for appointing new directors is set out in this document.

The current and proposed size of the organizations, the roles of directors and officers and other staff, and details of contracting organization are either contained within this document (including parts C through E) or available to ICANN on request.

Biographical information and background information for present board members are included in the document. Additional biographies for potential board members are available to ICANN on request.

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### A. Add new value to the Internet name space

sTLDs have the characteristic of identifying like groups of businesses or organizations on the Internet. In the same way that .co.uk (for example) gives information that a company is UK based, so sTLDs like .xxx make a clear statement of the nature of the business.

The availability of material of an adult nature on the Internet is a controversial and sensitive subject, on which there has been a global reluctance to hold a public debate. The combination of easy access to the Web, growing Internet usage by the Community, its consumers, and others, as well as powerful search technology strongly suggests the subject should no longer be ignored.

Minors form a high percentage of Web users, many of whom possess sophisticated technical knowledge about it. This is not, however, the industry's target market. Rather, the online adult industry is trying to find ways of reaching adults seeking adult material on the Web. Marketing techniques currently available depend on widespread distribution that, while finding the target market also reaches many minors and adults that do not seek such adult material.

The .xxx TLD creates a new and clearly differentiated space. The inclusion of the best-business practices for .xxx registrants will meet the needs of the Community that cannot reasonably be met in the existing gTLDs at the second level. The .xxx TLD makes it more efficient for suppliers and willing users to communicate, thus giving end users the choice to access or avoid such material. Finally, the .xxx TLD is clearly more informative than a .com or another gTLD or ccTLD extension to describe the material in the sites.

The statistics above clearly demonstrate that the .xxx TLD will enrich the broader global communities. The sTLD has broad geographic and demographic impact, serves one of the Internet's largest user communities and has the potential to attract more than 1 million registrations.

IFFOR has been constructed in such a way to have a broader functional scope.

As previously referenced, one of IFFOR's four SO's, the TLDSO, is required to serve as the policy development mechanism of the proposed .xxx TLD. The other three SOs have a broader functional scope that will be assisted in achieving their respective missions through the Grant Advisory Committee.

IFFOR is committed, as set out in its charter, to pursue various initiatives supporting educational programs and other initiatives safeguarding children online.

In addition, IFFOR will also create a legal defense fund to defend against any interference with lawful and protected conduct.

The proposed .xxx TLD is designed to give the online adult-entertainment industry the ability to categorize online information. This diversity of the Internet domain name space will help consenting adults to find the goods and services they want, while assisting parents to shield their children from the adult material shown. The .xxx string was selected as the string for the sponsored adult oriented TLD as it transcends geographic regions and languages while having high recognition and lasting value for both registrants and Internet users. The proposed .xxx string is clearly appropriate for the sponsored community as other strings were deemed too Anglo-Saxon and had the potential to lead to confusion (see above).

In reaching and enriching broad global communities, IFFOR has proposed a framework to bring together and foster communication between historically disparate viewpoints. Just as ICANN represents a unique private-public partnership in connection with the technical coordination of the Internet's name and numbering systems, IFFOR offers a unique framework for the responsible online adult-entertainment industry to work in conjunction with the broader Internet community to develop responsible business practices. Thus it can safeguard children while defending against predatory practices that impede the lawful activity of the adult-entertainment industry and consenting adults wishing to utilize these goods and services.

## **B. Protect the rights of others**

ICM and IFFOR propose a comprehensive array of mechanisms to minimize abusive registrations and protect the rights of intellectual property owners. Specifically, ICM and IFFOR will provide a process to ensure contractual enforcement, charter compliance, dispute resolution, and accurate Whois information as set forth in more detail in the following sections.

It is important to note that these mechanisms need not be permanently fixed. The TLDSO in its delegated capacity as the policy making body of IFFOR in connection with this proposed TLD will explore and evaluate other mechanisms to continually improve upon this area.

Although the proposed charter for the TLD restricts registration rights to only those individuals, businesses, and entities that are included in the defined Community. ICM and IFFOR would propose allowing trademark owners to defensively register if they choose. However, in connection with those domain names registered by trademark owners not in the adult-entertainment industry, these domain names shall not resolve.

### **C. Assurance of charter-compliant registrations and avoidance of abusive registration practices**

1. ICM and IFFOR will discourage the registration of infringing domain names through the following four principle mechanisms: Contractual Representations, Charter Verification, UDRP, and the Start-Up Trademark Opposition Proceeding (STOP).

a. CONTRACTUAL REPRESENTATION

ICM's registry-registrar agreement (RRA) will include the following requirement that each registrar include the following terms in its domain name registration agreement:

The Registrant represents that, to the best of the Registrant's knowledge and belief, neither the registration of the Registered Name nor the manner in which it is directly or indirectly used infringes the legal rights of any third party.

These contractual terms in addition to appearing in the domain name registration agreement will also be incorporated into the Whois verification process (see below) to ensure that the domain name registrant was been provided with both actual and constructive knowledge of the terms and conditions.

b. CHARTER COMPLIANCE

ICM proposes a hybrid charter compliance process, combining automated and manual procedures, prior to any domain name being added to the .xxx zone file. This verification process will be incorporated into the Whois process. As described below, the registry will send a unique HTML link to the registrant's e-mail of record. Once directed to this unique HTML link, the registrant will have to provide supplementary information that will allow ICM to verify automatically that the registrant is a member of the Community. If ICM cannot verify it automatically, it will refer the details to ICM's in-house administration staff who will perform a manual verification process. This compliance process is independent of the Charter Eligibility Dispute Resolution Policy (CEDRP), which is used where there is a compliance dispute, after the domain has been added to the zone file.

c. UDRP

ICM and IFFOR will require that the UDRP be incorporated into the domain name registration agreement. In addition, ICM and IFFOR believe that the higher price point of domain names and the initial multiple year registration term will further discourage abusive registrations.

d. STOP

ICM and IFFOR recognize the importance of requiring additional safeguards to minimize abusive registrations during the TLD's initial launch. ICM and IFFOR also recognize that some abusive registrations may take place, so it is critical to provide a timely mechanism to resolve such disputes. As described in greater detail in the next section, ICM and IFFOR will be using the STOP proceeding as originally implemented by NeuLevel during the launch of the .biz TLD.

2. ICM has set out a screening process that will review new domains at the point of registration (see 1.b above). The mechanism it will use for charter compliance post registration is the Charter Eligibility Dispute Resolution Policy (CEDRP). The CEDRP is an administrative procedure that all ICANN sponsored TLDs have incorporated into all domain name registration agreements.

However, in seeking to enhance the utility of the CEDRP, ICM and IFFOR have analyzed other domain name administrative procedures. To date some of these mechanisms have not been broadly used as an effective mechanism to combat abusive registration because the challenger/complainant must expend substantial sums of money (in excess of \$1,000) to initiate a proceeding that potentially allows the domain name registrant to "cure" the violation after the expenditure of money by the challenger/complainant.

By way of example, under the .US Nexis challenge procedure the prevailing challenger/complainant is not permitted the opportunity to register the domain name in violation of the policy. This means that good faith challengers have to expend substantial amounts of money with no guarantee that they will be able to register the domain name.

In an effort to promote greater use of the CEDRP to deter abusive registrations, the prevailing challenger will be provided the right to register the domain name if they meet the registration requirements, as well as the inability of the original registrant to cure the violation after the initiation of a CEDRP.

These contractual terms in addition to appearing in the domain name registration agreement would also be incorporated into the Whois verification process (see below) to ensure that the registrant was provided with both actual and constructive notice of the contractual terms. The second factor that should produce a downward pressure on non-charter violations is the marketplace, specifically the higher price point and two-year registration term.

However, the fourth and most compelling factor is common sense. One of the reasons that charter compliance is so critical is that without it, there is the potential for every TLD, regardless of the specific type, to drift toward an open and unrestrictive state. To illustrate how charter enforcement is so critical to prevent abusive registrations it is valuable to take a historic perspective. Traditionally, abusive registrations have generally fallen into one of two categories: cyber-squatters or typo-squatters.

The very nature of the .xxx TLD lends itself to deter abusive registrations in

either category. In the case of cyber-squatters, third parties register domain names to prevent legitimate entities from registering and using the domain names, such as in *Panavision v Toepfen*. In this scenario there are likely not going to be many non-adult-entertainment companies trying to establish a presence online in an adult-oriented TLD, as they would be prohibited by the charter criteria anyway. Although there may be some entities that may try to extort money from existing adult-entertainment companies, ICM and FOR believe that the modified STOP Proceeding and other IP safeguard mechanisms adequately address these concerns.

In the case of typosquatters, such as Zuccarini, they typically register common typographical entries that users enter while surfing the web. These typo-squatted websites traditionally redirect users unknowingly to gambling, drugs, or adult material related sites. By way of example, consider UDRP decision, W.I.P.O D2000-1158 ([www.discovercard.com](http://www.discovercard.com)) in which the registrant redirected users to a gaming site when they tried to leave the original site.

Typosquatting has become such a problem that the United States recently enacted legislation titled the Protect Act (see above) that makes it illegal in certain circumstances to use misleading domain names with the intent to deceive people. However, it is highly unlikely that an Internet user will fall prey to a typo-squatter in the proposed TLD, as it is very unlikely that an Internet user will accidentally type in a second level domain name followed by the TLD extension .xxx. This common sense approach is also embodied in the affirmative defense set forth in Section 108 of the Protect Act.

For these reasons, ICM and IFFOR believe that charter violations are highly unlikely in the proposed TLD.

3. ICM and IFFOR intend to fully comply with the Schedule of Reserved Names set forth in Attachment 11 of the base sponsored registry agreement as well as reserve from registration all country names in accordance with ICANN Resolution 01-92., ICM and IFFOR also intend to reserve from registration a limited number of domain names in accordance with existing registry agreements for business development. This list has not been formulated at this time.

4. The aforementioned mechanisms, including but not limited to, charter verification & compliance, pricing, UDRP, CEDRP, and STOP work collectively to provide a safety-net of protection against abusive registrations. ICM has always placed high importance on minimizing abusive registrations and protecting the rights of others. In fact during the 2000 application process, ICM received the highest rating in a review performed by the ICANN Intellectual Property Constituency (IPC) regarding IP protection safeguards.

The enhancements with regard to the UDRP, charter compliance, and Whois verification show ICM and IFFOR's continued focus on minimizing abusive registrations and protecting the rights of others.

5. ICM and IFFOR recognize that it is of critical importance that the registry operator and the sponsoring organization maintain their role as a neutral third party provider. However, in an effort to facilitate compliance with applicable trademark and anti-cybersquatting legislation ICM and IFFOR will incorporate language similar to that in the Afiliias RRA in each domain name registration agreement.

ICM and IFFOR also believe that the language originally incorporated into the NeuLevel RRA in connection with its IP Claim Service may also be suitable for inclusion into its agreements.

6. As indicated above, ICM and IFFOR propose a comprehensive array of stand-alone and overlapping mechanisms designed to minimize abusive registrations and protect the rights of intellectual property owners. With regard to special protection for famous trademark owners, ICM and IFFOR believe that the aforementioned broader safeguard mechanisms are equally suited to protect these interests as well.

ICM and IFFOR also propose to expand the scope of the UDRP applicable to .xxx to allow for individuals to bring a UDRP action. This will resolve the lack of uniformity in how personal name cases are decided, see WIPO D2000-0210 (JuliaRoberts.com - Transfer Authorized); WIPO D2000-0847 (Madonna.com - Transfer Authorized); WIPO2000-1532 (BruceSpringstein.com - Transfer Denied); and WIPO D2000-0596 (Sting.com - Transfer Denied).

#### **D. Assurance of adequate dispute-resolution mechanisms**

##### 1. UDRP

ICM and IFFOR intend to adhere to the ICANN UDRP, with the following modifications/enhancements. As referenced above it is proposed that the UDRP be modified to allow individuals to initiate proceedings where the domain name in question is similarly confusion to their personal name. Another proposed modification under consideration involves requiring domain name registrants to pay a nominal fee at the commencement of a UDRP proceeding. This is to prevent abusive registrants that register a domain name and then seek to infringe or dilute the trademark holder's rights during the UDRP proceeding. Therefore, upon the commencement of a UDRP proceeding, the domain name registrant will have to pay a nominal fee to prevent the domain name from being placed on hold (no DNS resolution) during the proceeding.

##### 2. STOP PROCEEDING

ICM and IFFOR propose to incorporate a modified STOP proceeding into the roll-out phase of the proposed TLD based on, but not identical to, NeuLevel's in the roll-out of the .BIZ TLD. The principle modifications involves the timing of the notification. Specifically, the notice will be incorporated into a 2-tier both during the initial registration process and during the subsequent Whois verification procedure prior to the domain name being added to the zone files for global resolution.

The primary reason why ICM and IFFOR believe that a modified STOP proceeding is the best course of action, is because it is most responsive to the needs of the adult-entertainment community. Specifically, Section 2(a) of the Trademark Act, 15 U.S.C. §1052(a), bars the registration of immoral or scandalous matter on the Principal Register. Moreover, the refusal to register immoral or scandalous matter has been found not to abridge First Amendment rights, see *In re McGinley*, 660 F.2d 481, 484-85, 211 USPQ 668, 672 (C.C.P.A. 1981) (addressing Fifth Amendment Due Process Rights). For a further discussion of the obstacles confronting adult-entertainment providers please reference Section 1203.1 of the TMEP for references to statutes and administrative/judicial case law.

ICM and IFFOR also believe that the potential for abuse is substantially less with the proposed modified STOP proceeding in the case of the .xxx TLD. Although the final numbers have not been released, it has been estimated that there were only approximately 1,000 STOP challenges filed as opposed to the over 17,000 associated with the Afiliias Sunrise Process.

## **E. Provision of ICANN-policy compliant WHOIS service**

ICM and IFFOR intend to comply with all applicable Whois requirements. Fulfilling these requirements will be facilitated by the thick EPP standard by which the registry will operate. As previously mentioned, and as set forth in detail in Part E, ICM will be contracting with Afiliias to provide key registry infrastructure, including Whois services.

Notwithstanding this compliance with existing ICANN Whois policy, ICM and IFFOR propose the following enhancement to increase the accuracy of Whois data while simultaneously offering increased registrant privacy.

To increase Whois accuracy, ICM and IFFOR propose a Whois verification mechanism that will not allow a domain name to resolve until the Registry has verified the validity of the email address provided by the registrant. To date the Registrars have employed varying degrees of Whois verification mechanisms/procedures with nominal results. ICM and IFFOR believe this is a substantial move in the right direction to bring about more responsible business practices within the domain name industry.

The second Whois service is a proxy registration service that would be available exclusively to attorneys representing their adult-entertainment clients. Under the proposed proxy registration service, all Whois information (actual registrant and proxy) would be retained in the registry's "thick" database.

### **REGISTRAR COMPLIANCE:**

Although ICANN has succeeded in introducing competition into the domain name registration marketplace through the accreditation of over one hundred and sixty Registrars, efforts to enforce the accreditation process have had only limited success, at least in part as a result of an open "all or nothing" enforcement model. In addition, the absence of metrics by which registrants can measure Registrar performance has contributed to some of these problems. Instead, registrants must rely primarily on price and word of mouth. ICM and IFFOR intend to implement a compliance program modeled after the ICANN Internic.net website for documenting false and/or inaccurate Whois data. However, ICM and IFFOR intend to make this online compliance mechanism much more comprehensive to handle a wider range of issues by both registrants and interested third parties. This would include among other things, renewal/transfer problems, failure to comply with court orders, etc.

These complaints would be screened using mechanisms currently employed by ICANN to minimize abusive filings. Once verified, the complaint would be entered into a database that the Registrar would access online via a user ID and password. The Registrar would then contractually be obligated by the terms of the RRA to respond to and close out each ticket. One of the problems with the ICANN Whois reporting tools is that ICANN has no contractual authority to require Registrars to update the docketing system. Under the ICANN accreditation agreement, the Registrar is only required to investigate and resolve inquiries regarding false and/or inaccurate Whois data.

Under the proposed Registrar compliance program, summary metrics associated with each Registrar would be posted online to allow potential domain name registrants to objectively gauge the performance of each Registrar. By making this information publicly available, Registrars will strive for enhanced compliance as a result of market pressure not solely contractual obligations.

