Comments of the Noncommercial Stakeholders

The Noncommercial Users Constituency and Noncommercial Stakeholders Group (NCSG) represent nearly 200 nonprofit organizations, public interest advocacy groups, educators, researchers, philanthropic organizations and individuals.

NCUC and NCSG believe that ICANN has a very simple choice to make in its handling of the .xxx domain.  The board can accept the fact that ICANN made serious mistakes in its handling of the matter and then make a good faith effort to rectify those mistakes – or it can refuse to do so. That is all there is to this decision. The complicated “process options” offered by the general counsel are distractions. Either ICANN accepts the determination of the independent review panel and creates the .xxx domain, or it doesn’t. Those are the only “options” of relevance to the community.

Noncommercial users believe that the board should accept the decision of its independent review panel and prepare to add .xxx to the root. Anything less will raise serious doubts about ICANN’s accountability mechanisms and will undermine the legitimacy of the corporation and its processes. The contract offered to ICM Registry should be based on the same template as that offered to .mobi, .jobs and other contemporaneous applicants for sponsored TLDs.

Noncommercial stakeholders are deeply interested in the outcome of the .xxx application for two reasons.

1. As supporters of improved accountability for ICANN, we would be deeply concerned by a Board decision that ignored ICANN’s own Independent Review process. The IRP is one of ICANN’s few external accountability mechanisms. The .xxx case was the first test of that process. A group of distinguished and neutral panelists reviewed the record of this case in extensive detail, and decided against ICANN. A Board decision that ignores or circumvents the IRP decision would seriously undermine ICANN's credibility and raise fundamental questions about its accountability mechanisms. We also feel that refusal to comply with the IRP will encourage dispute settlement through litigation in national courts, which is not in the interests of ICANN or its global community.
2. ICANN’s decision has important implications for Internet freedom of expression. While a .xxx domain is undeniably controversial, ICANN must guard against becoming a tool of those who wish to discourage or censor certain kinds of legal content. A TLD string should not be rejected simply because some people or some governments object to the types of content that might be associated with it. ICANN's mandate to coordinate top level domain names cannot and should not become a mechanism for content regulation or censorship.

To conclude, we ask the Board to look past the noise that will surely be generated by any public discussion that touches on pornography. This public comment period should not be a poll assessing the popularity of the .xxx domain. The board must focus exclusively on compliance with its own appeals process and strive to maintain ICANN’s integrity.