

**Preliminary Transcript of Director Voting Statements for Resolutions
2011.03.18.23 – 2011.03.18.25:
Vote on Approval of ICM Registry Application for .XXX**

18 March 2011 Board of Directors Meeting

Note: The following voting statements are in draft form until approved with the Minutes of the 18 March 2011 Board Meeting. These reflect Director statements made either during the Board meeting or submitted in writing shortly after the vote. The statements are produced in order of submission.

George Sadowsky:

The issues that are presented by this resolution have been some of the most contentious in ICANN's history, and when I joined the board I anticipated that I might have to address them during my tenure.

I've struggled for the past year in good faith to understand and analyze the issues presented based upon what I understand to be in the best interests of the organization.

As a result, I've decided to oppose the resolution.

My position is based on five major considerations.

The first one is that my position in this vote is not about adult entertainment. My personal attitude toward adult entertainment is liberal. It has nothing to do with my opposition to the proposed resolution.

Further, my vote is in no way a statement against Stuart Lawley or against ICM, the entity sponsoring dot xxx, because with the exception of implicitly claiming to have broad-based support of participants within the industry to which they belong, I believe they've behaved according to the processes established by ICANN.

Our issue today really has nothing to do with adult content, per se, and my vote is not against pornography on the Internet.

Now, as we know, the Internet is filled with pornographic sites. They're easy to create and locate, even without a common label at the top of the domain namespace.

Whether dot xxx is or is not approved, I anticipate that the amount of pornography on the Internet and its rate of growth will not change significantly.

Second, my position is informed by my perception of insufficient proof of worldwide community support.

ICM applied for dot xxx as a sponsored gTLD, and under the sTLD process, applicants were required to show -- and I quote from the RFP for the sTLD round of applications -- were required to show, quote, broad-based support from the community it is intended to represent.

To the best of my knowledge, and based on data provided to this board in various ways, I believe that the evidence indicates that such broad-based support was illusory.

The process in which this board is now engaged was initiated when a previous ICANN board made what I believe was a fundamental error, agreeing to proceed to contract negotiations with ICM.

I now believe that the judgment of the IRP, the independent review panel, claiming that the board's 2005 decision determined that ICM met the sponsorship criteria should not have been accepted.

Third, this vote is not about freedom of speech. The Internet today is a global infrastructure that anyone can use to become a publisher. Today, there are millions of Web sites providing content to the world on a very wide range of subjects and areas, including adult content. The mandate of ICANN does not extend in any way to judgment of adult content or any other content, per se.

It's my opinion that whether dot xxx is or is not approved, the amount and the rates of growth of types of content on the Internet will not change significantly.

If dot xxx is not created, I maintain that individual users of the Internet will not be harmed.

Users who want adult content will be able to find it as easily as if dot xxx existed.

It's my belief that publishers of information on the Internet, including publishers of adult content, will be able to implement their rights of free expression as easily in the absence of dot xxx as in its presence.

Fourth, and extremely important, I believe that the future of the unified DNS could be at stake.

I submit that the approval of the application for dot xxx could encourage moves to break the cohesiveness and uniqueness of the DNS.

In my judgment, it would undoubtedly lead to filtering the domain, and quite possibly instigate the erosion, degradation, and eventual fragmentation of the unique DNS root.

Now, while we know that filtering already exists, I believe that the creation of dot xxx would mark the first instance of an action by this board that may directly encourage such filtering, posing a risk to the security and stability of the DNS.

In my judgment, the board should not be taking actions that encourage filtering or blocking of a domain at the top level.

Further, I believe that the filtering of so-called offensive material can provide a convenient excuse for political regimes interested in an intent on limiting civic rights and freedom of speech.

Further, I believe that such moves provide an incitement to fracture the root, a concern that we've recognized in preparation for the new gTLD program as a distinct threat to the security and stability of the DNS.

Interestingly, we've heard opinions of others that in this manner, the creation of dot xxx could quite possibly lead to a loss of free speech rights in countries with repressive regimes. We must avoid this at all costs.

The majority of opinions that I've heard from those at ICANN meetings have expressed support for the inclusion of dot xxx in the root. However, from the point of view of the average person in our larger world of 6 1/2 billion people -- I'm going to repeat that. From the point of view of the average person in our larger world of 6 1/2 billion people, it's my opinion that these conversations in ICANN meetings would most probably have been

perceived as a meeting of a small exclusive club of affluent people coming from a small subset of the world's population, many of whom have, at best, a superficial understanding of other cultures and with insufficient regard of the potential effects of admitting dot xxx into the root, into societies with different and deeply held cultural and behavioral norms.

Fifth and centrally, ICANN has a duty to uphold the global public interest.

ICANN has agreed that its actions are to be in the global public interest, and I believe that if this resolution passes and dot xxx is put into the root, the action could be regarded as against the global public interest.

Compared to what I believe could be significant harms, there is, at best, a very limited global public interest case to be made for the inclusion of dot xxx in the root in terms of its possible effect on the level of child pornography on the Internet.

I believe that there is a stronger case that there could be significant harmful and possibly irreversible effects with regard to the uniqueness and cohesiveness of the global Internet if dot xxx is, in fact, included in the root.

It's my opinion that the duty of ICANN is not to be a passive agent in the process of monetizing character strings for others to exploit with little regard to the effects of such actions in the world.

If dot xxx were to be included in the root, I believe this would be in disregard of significant global sensitivities.

The community dialogue appears to regard character strings chiefly as opportunities for monetization and profit. This can be a legitimate business approach, but I believe that in the interest of the stability of the Internet, it is ICANN's duty to be aware of probable negative externalities in its consideration of such activities.

You know, if today's vote had an impact only in my own country, the United States, I wouldn't object to the establishment of this domain, but the application this board is invited to consider has more wide-ranging implications far beyond the United States or even beyond the so-called developed countries alone.

It has the potential to affect those 6 1/2 billion people and their considerable complexity of their various cultures.

Those cultures hold diverse views regarding many aspects of human conduct, including different approaches to philosophical concerns, human and civic rights, religious persuasions, freedom of speech and expression, political systems, aesthetic expression, and sexual preference.

We may have opinions, positive and negative, regarding other cultures and ethical systems, but unless in defense either of self or of core human rights, it's my opinion that we must proceed carefully when we consider the delegation of top-level domains, global-level domains, consisting of concepts and terms that may run counter to the sensibilities of significant segments of the world's population.

In retrospect, it's unfortunate that the criteria for approval of ICM's application -- that is, the sTLD process -- did not include a formal objection procedure to account for the diverse cultural concerns that could arise.

If dot xxx were approved, I believe that it would be a victory of compulsory adherence to process, rather than a serious discussion regarding our responsibility for the future of the DNS and the Internet.

It would be a victory of process over goals and of means over ends.

And if, in the future, there arise significant unanticipated negative consequences as a result of this decision, will our defense be limited to the excuse, "But I just followed the process"?

So in spite of some possibility of resulting in some useful change, I believe on balance that the proposed resolution currently before the board threatens the long-run integrity of the DNS and works against the global public interest. It should be defeated.

Katim Touray:

I would also like to say that I am going to be voting against this resolution. And my reasons for the vote that I intend to make are very simple. In fact, it's only one.

It's been a very contentious process, a very litigious process, and of course a lot of emotion has been spent by both sides on the matter. But for me, I think the deal killer has been my own evaluation and my assessment of the impact that I perceive this would have on ICANN's relationships with governments around the world.

It is my belief that the GAC is a very important and vital constituency of ICANN, and the GAC we are dealing with now is different from the GAC that ICANN was dealing with three years ago and, dare I say, five years ago. There has been a fundamental shift in the central gravity, as it were, of the involvement of the GAC in ICANN. Many governments are now waking up to the reality of the need for them to get more involved in what ICANN is doing for the greater good of the global Internet community.

And so it is for this very reason that I think that for ICANN to, on this matter, put aside the advice of the GAC and its members would, I think, be unconstructive and, in the end, poisonous to the atmosphere that we need to build -- and a positive one at that -- between ICANN and the GAC and the rest of the governments of -- and the governments of the world.

And I say this also because in my mind, the relationships between ICANN and the GAC and governments and GAC is probably the most single existential relationship that we have. That is, I say "existential" in the sense that it is one relationship that could potentially have an existential threat on ICANN.

You and I know that there have been a lot of governments that have been pushing, in Internet Governance Forums around the world, for the transfer of some of the work that's been done by ICANN to other international bodies and to other international frameworks.

In other words, we are talking about a situation where there are many governments that would be very happy to see ICANN gone. And so for that very reason, not that I see this as a panic move or whatever, but I think in the interest of engagement and of constructive relationship with governments around the world, I think it would be unwise for us to pass this resolution. And it's for that very reason I intend to vote against it. Thank you.

Bertrand de la Chapelle:

As you can imagine, it is an extremely difficult decision to make. As a board member that arrives after an extremely long process that I have followed extensively, you can imagine that I've pondered the importance of the vote I'm making today. I will vote in favor of the resolution, and I will explain why.

I share a large number of the concerns expressed by both George and Katim. And I want to say as a first element that it is in full consideration of all the cultural sensitivities that are legitimate that must be taken into account, that are being taken into account. This is not a discussion about a relationship between a small minority and the governments of this world so much. Even a small minority, we are exactly what has been described. We are privileged. We are here. We can make decisions. We can participate. Nothing prevents, however, a small minority to weigh the pros and cons of situations and try to define what is best globally.

The reason why I'm voting in favor today is that I have studied the consequences of voting no, and the consequences would not be earth-shattering. We can vote no. Nothing is compelling us to vote no. We are free. This is a decision.

If we vote no, things will evolve. And, by the way, the way the resolution is worded today, if we were to vote no, it would not even be the end because we actually could pass then another resolution to say we definitely vote no because if we vote no here, literally speaking, we have not decided against. We have decided not to put it positively in the root. So we can go on in this game forever, and this game can go on forever.

And so I wondered what is most important, what is most harmful for the model that we are following. Is it to have the game go on forever, or is it to solve the question today? And solving the question today has to take into account another thing. If we are to vote no today and, for instance, decide not to vote to endorse, we may have a decision later on to formally decide not to do it. And we may even not have a majority there.

But what would happen in any case, even if we decided in this round, in this selection to not endorse ICM, there will be lawsuits. There will be a lot of

nice processes. This is not the problem. But there will be a very legitimate application in the new gTLD program for .XXX. And as George said, it has nothing to do whether there is the content or no content on the Internet that relates to pornography. This is not a matter for the ICANN board to decide whether it is good or not to have pornography on the Internet.

If there is a vote no, there will be a legitimate application that will come in whenever the round comes in. And my evaluation of what is in the applicant guidebook and what should be in the applicant guidebook is that the result is that a perfectly non-sponsored, non-community TLD would be submitted because it is a burden to have community restrictions.

And I was asking myself this very simple question, what is better, having in a few years a completely non-controlled .XXX TLD? Because there will be no obligation to have something, and it would pass through the objections or the current mechanism that through this very torturous root has led to at least a significant amount of framing this.

So in conclusion, it is not an easy decision to make. And the reason why I decide in the end that the global public interest is satisfied is because it is not insulting to other cultures. It is a reflection of the reality and the diversity. And it is altogether better to have this framework than the worst framework that would necessarily happen later. Thank you.

Erika Mann stated:

It is, indeed, a difficult decision because it takes us into new areas. And whenever we move into new areas as human beings, we tend to be uncertain. And that's a natural reaction because what we don't know in reality what are the perfect answers. But that's the way we as human beings explore new adventures. We don't know what is the perfect answer. So we always have to take risk. It is not something new which we experience here in the Internet world. And with this decision on XXX, I think it is something that will be with us forever.

So my consideration taking all points into my reflections, the technical questions, will it be in conflict with the way the DNS is structured, the political questions with regard to our global environment, the stability questions. And I went around as much as I could in this short time, since I

remember looking into the documents, finding answers with the community. My answer is: I will say yes. I want to take the risk because we will have to face this challenge anyhow. If we don't face it today, we will have to face it with the new round on new gTLDs. It is not going away. And nobody, and at least not in the near future, can say that's right, that's wrong.

So taking this all in consideration, I would say yes and I will take the risk and face the challenge. Thank you.

Ray Plzak:

Yes, this is, indeed, a time of challenge. But I would point out the fact that, yes, we are following a process here; but I do not think we are slaves to this process.

I know that many of my fellow board members, in fact, all of my fellow board members, have agonized over this process. We have agonized over it for a long time. And so that we have chosen to move down the road that we are going doesn't mean we are slaves to what we're doing.

We have just spent three, four days this week and several days in Brussels discussing nothing but process. And so I think that this resolution, while it is challenging, it is a challenge to us as an organization. It is also a chance for us to step forward, so I will be voting yes on this.

Kuo Wei Wu:

I share what George said. It is a very painful decision. No matter what a single member decides, I think we all do our best for this ICANN mechanism, and also for this whole community.

And I fully believe every single member, no matter whether he votes yes or no, I think we actually look to the best interests for this whole community and this mechanism. And my vote will be no.

Steve Crocker:

As you all have heard, each and every one of us has labored hard to think through the issues here. I want to make it clear that this has weighed

heavily on us as individuals, heavily on us as board members.

We have listened to all segments of the community, and we have specifically listened very, very carefully to the GAC with great respect and with great attention.

So the decision that we're making here is not casual and it is not in any way intended to give less weight than you would hope that we would give.

That's the main thing that I want to say here, not to be defensive or proactive about which way the decision goes but to be very, very strong in stating that we have been very interested, very attentive and given great weight, as I said, both to the letter and to the feelings and the meanings that are conveyed behind the words that have come to us from the GAC. Thank you.

Rita Rodin Johnston:

There's an expression in the U.S. "caught between a rock and hard place." And for those that are not familiar with it, it connotes being caught between two very difficult choices. And I have never felt this so poignantly as with this XXX decision.

I was a member of the Board in 2007 when I and we voted against XXX. We were instructed notwithstanding activities of a prior board in 2005 to review the application to see whether, among other things, it met the sponsorship criteria. At that time, I did not feel that it did so I voted against.

Subsequently, an independent review panel reported that my vote was improperly considered. As a Board member, I did not have the ability to assess the sponsorship criteria because the prior Board had made that decision – maybe in a confusing way – but it made that decision in 2005.

It is now 2011, six years later, and we still have not made our final decision. The reason I think the situation is between a rock and a hard place is because this is a clear lose-lose situation for our Board. If we vote in favor, we are seen to ignore comments of community participants including the GAC. If we vote against, we do not honor the findings of an independent process that we have set up to review our decisions.

In my view, we all learned that the criteria set up as part of the prior sTLD round could have been improved in many important areas. In reviewing some of the elements of the IRP process, as with many of ICANN processes, there also is room for improvement. And as we've seen this week, the consultation process with the GAC is still in its quite nascent stages and needs urgent attention.

But the bottom line for me is on balance, I feel a responsibility to respect our processes. However flawed they may be – and I hope they are included in the ATRT process for improvements – they exist. You all read them, you use them, and you rely on them.

In that instance, I do not feel that I can now again for a second time vote against this TLD. To me, that would mean that I place my status as a Board member above everything and everyone else here, and I don't think that is even marginally appropriate or true.

This is not a debate about pornography or free speech or respect for religious, cultural or governmental differences. The time for that is long past. This is a debate about respect for process.

So I hope, to channel President Clinton as many have done this week, regardless of our individual, personal views on this issue, we can all join together and stumble forward with this TLD.

I want to express apologies to the GAC members who do not support this TLD. Blocking occurs today, and this vote may exacerbate that which would be very unfortunate.

I want to apologize to community members who took the time to come to the mic yesterday and many times over these long years to oppose this TLD. The good news for you is XXX will not quash free speech, nor will it affect any other TLD so your sites in dot com and others can continue to flourish, or do whatever the appropriate word would be there that they do.

And, finally, to the dot xxx registry, good luck, boys and girls. You can be sure all eyes will be watching. I hope that you uphold your contractual commitments and will be prudent, cautious and responsible in this bold new space. Thanks very much.

Suzanne Woolf:

I just want to note briefly that one of the reasons why this has been such a difficult set of decisions is that sometimes it is not possible to give unambiguous technical advice, as much as we would like the world to work that way; and this has been one of those times. It seemed worth noting on the issue of prohibition of access or blocking that what appears in the rationale after much discussion and soul searching. I'll just point that out from the document.

The issue of governments or any other entity blocking or filtering access to a specific TLD is not unique to the issue of the dot xxx sTLD. What we agree is blocking of TLDs is generally undesirable. If some blocking of the XXX sTLD does occur, there is no evidence the result will be different than the blocking that already occurs. Thank you.

Rod Beckstrom, CEO and President (in support of his abstention):

This was an extremely difficult decision. There were extensive discussions and debate by the Board on this matter.

As expressed in Brussels last June when this issue also came to another related vote, while I accept the contribution to ICANN's accountability and transparency provided by the existence and the use of the independent panel review process, I nonetheless remain concerned about the determination by two of the three panelists that the ICANN board should not use business judgment in the conduct of its affairs. I recognize that the Board did not adopt this finding of those panelists, and that the Board affirmed its application of business judgment to this decision within the rationale for this decision.

In my view as CEO, it is important to reassert that the Board must be able to use business judgment in order to protect the global public interest in the coordination of the root of the Internet and the domain name system...

In addition, I note the concerns of the GAC, which while not expressed as a clear decision, was nonetheless directional.