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Claire Perry MP
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The Rt. Hon. Jeremy Hunt MP
Secretary of State for Culture,
Olympics, Media and Sport
communications.review@culture.gsi.gov.uk

Re: Proposals for an “Opt-In” Model for Access to Online Sexually Oriented Material

Dear Madam Perry and Mr. Hunt,

ICM Registry LLC (“ICM”), operator of the .xxx Internet domain, welcomes this opportunity to submit comments to the Parliamentary Inquiry on Online Child Protection. ICM also responds to Culture Secretary Jeremy Hunt’s open letter seeking input on the forthcoming Green Paper and White Paper in advance of the Communications Bill.¹

One proposal being considered would require Internet users to make what is being described as an “active choice” in order to obtain sexually oriented material on all top-level domains, including without limitation .com, .co.uk, etc. Put more plainly, this proposal, if adopted, would require prior blocking of certain services and websites before consumers could get access to the open Internet. ICM believes such a mandatory blanket approach is unnecessary to prevent minors from accessing inappropriate material online, is incompatible with the principles on which the Internet is based, and inconsistent with protections for freedom of expression. ICM is convinced that there exist better ways to maximize individual choice and to protect children.

The .xxx Domain – A Voluntary Approach

ICM conceived the .xxx domain in the belief that it is not necessary for policymakers to have to choose between child safety and freedom of expression. A central purpose of the domain is to enable providers of sexually-oriented content to use the .xxx domain on a non-exclusive and voluntary basis and also to give end users greater ability to find the content they want and to avoid what they do not want. It provides a private sector, voluntary solution for members of the adult content community who agree to adhere to business practices designed to ensure a safe and secure viewing experience for consumers of adult content while simultaneously providing safeguards for those who would prefer to avoid such material. It adds to, and enhances, the broad array of parental empowerment tools the Internet makes possible.

¹ Open Letter, A Communications Review for the Digital Age, Jeremy Hunt, Secretary of State for Culture, Olympics, Media and Sport, (16 May 2011), *available at* http://www.culture.gov.uk/images/publications/commsreview-open-letter_160511.pdf.

In securing Internet Corporation for Assigned Names and Numbers (“ICANN”) approval to operate the .xxx domain, ICM is both philosophically committed and contractually bound to the voluntary, non-regulatory principles on which the global Domain Name System is based. The community of .xxx consists of individuals, business, entities, and organizations that have agreed to comply with policies and best practices guidelines promulgated by IFFOR and (a) provide online adult entertainment intended for consenting adults; (b) represent providers; or (c) provide products or services to providers and representatives of the community.

Baseline policies for the domain include ethical business practices that responsible members of the adult community already follow: strict policies against child abuse images and marketing to children, prohibitions on malware, spyware or SPAM advertising, protections for consumer privacy, and protections for intellectual property. In addition, ICM has implemented a unique MetaCert Tagging system, so that individuals wishing to avoid sexually oriented material may easily filter out unwanted content; it automatically labels all .xxx websites as potentially containing adult content thus allowing parents and schools to effectively block access to those websites. The MetaCert Tagging System goes a step further by also labeling hundreds of thousands of adult sites in other domains (including .com and .co.uk). Such an approach gives parents and schools a powerful tool to prevent children from viewing that content, while preserving free expression.

Is Compulsion Required to Protect Children?

Those who advocate an “opt in” approach – blocking content in advance – assert that such a solution is necessary because voluntary approaches are ineffective. But that argument for prior restraint is not supported by the findings of numerous expert panels that have studied the issue. The Bailey Report recommended that the Internet industry “must act decisively to develop and introduce effective parental controls,” and said the industry should ensure that customers “make an active choice over what sort of content they want their children to access.”² But this does not suggest that mandatory, across-the-board governmental policies are warranted. Indeed, the recent European Union report on online safety for children focused more on educating parents and children about online risks, and providing appropriate tools to support individual choice, such as blocking or filtering technologies.³

These findings are consistent with those of numerous expert reports on the issue of online safety.⁴ The collective product of extensive review by hundreds experts, the major studies agree on four key principles in this

² Reg Bailey, *Letting Children Be Children*, Report of the Independent Review of the Commercialisation and Sexualisation of Childhood (June 2011) at 39.

³ Livingstone, S., Haddon, L., Gorzig, A., and Olafsson, K., *Risks and Safety on the Internet: The Perspective of European Children* (2011) at 145-151.

⁴ *Safer Children in a Digital World: The Report of the Byron Review*, March 27, 2008, www.dcsf.gov.uk/byronreview/pdfs/Final%20Report%20Bookmarked.pdf (“Byron Report”); Online Safety and Tech. Working Group, *Youth Safety on a Living Internet*, www.ntia.doc.gov/reports/2010/OSTWG_Final_Report_060410.pdf (2010); *Enhancing Child Safety & Online Technologies: Final Report of the Internet Safety Technical Task Force to the Multi-State Working Group on Social Networking of State Attorneys General of the United States*, Dec. 31, 2008, at 10, <http://cyber.law.harvard.edu/pubrelease/isttf> (“ISTTF Report”); *PointSmart.ClickSafe: Task Force Recommendations for Best Practices for Online Safety and Literacy*, www.pointsmartclicksafe.org/report (2009) (“PointSmart Report”); *Youth, Pornography and the Internet* (Washington, DC: National Academy Press, 2002), www.nap.edu/html/youth_internet (“Thornburgh Report”); COPA Commission, *Report to Congress*, October 20, 2000, www.copacommission.org (“COPA Commission Report”). See also UK Department for Children, Schools and Families and the Department for Culture, Media and Sport, *THE IMPACT OF THE COMMERCIAL WORLD ON CHILDREN’S WELLBEING – REPORT OF AN INDEPENDENT ASSESSMENT* (December 2009).

area: (1) educating children and parents about media use is the *primary* solution for most concerns about online risks; (2) parents should be empowered with an array of tools for controlling content, but there is no quick fix or silver bullet; (3) industry can help parents with self-regulatory measures and best practices to increase the efficacy of content management tools; and (4) inflexible, top-down government mandates quickly become outdated and do not work, while technological mandates also stifle innovation.

These expert reviews consistently have found that voluntary measures supported by industry are likely to be significantly more effective than legislated or mandated solutions.” *PointSmart Report* at 8. The COPA Commission emphasized the risks inherent in moving from voluntary efforts into government mandates. *COPA Commission Report* at 23, 28-29, 31. In particular, the *Byron Report* recommended a cooperative and self-regulatory approach rather than government attempts to regulate industry, which carry “a serious risk that the beneficial joint working arrangements would be lost.” *Byron Report* at 69 (top-down mandates “may struggle to frame effective legislation given fast-changing technology” and may “become over prescriptive [or] stifle innovation”).

Threats to Freedom of Expression

Online communication is uniquely-suited to facilitating individual choice. As a consequence, mandatory, one-size-fits-all policy solutions are particularly destructive to freedom of expression when applied to the Internet. The European Court of Justice last week reaffirmed that requiring ISPs to use filtering measures to impose advance blocking of content and to apply such measures indiscriminately to all customers is inconsistent with Article 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms. *Scarlet Extended SA v. Societe Belge des Autuers, Compositeurs et Editeurs (SABAM)*, Case C-70/10 (Nov. 24, 2011).

Some advocates of “opt-in” solutions claim that system-wide solutions are necessary because seventy-three percent of British households have Internet access and children in those households are heavy Internet users. Such claims purport to spy a solution by peering at the problem through the wrong end of the telescope. When policymakers look for ways to protect children, it is not as important to know how many households have Internet service as it is how many households have *children*. Otherwise, a blanket policy that denies access to broad swaths of Internet content until people ask permission to view it merely treats adult citizens as if they were children.

Such a monolithic solution is drastically overbroad, because children under 18 account for only 23 percent of the UK’s population.⁵ This means that three-quarters of households in the UK have no children residing therein. To require advance blocking of Internet content in all households in the interest of protecting a minority of them is plainly excessive, particularly when those households may avail themselves of parental empowerment tools.

Thus, as the EU Court of Justice found, mandatory blocking is incompatible with the concept of an open Internet, and inconsistent Article 10, which guarantees the freedom “to receive and impart information and ideas without interference by public authority and regardless of frontiers.” We acknowledge that such protections for free expression are not unlimited, but to restrict information in all households because some may not use the tools

⁵ See Census 2001 First Results on Population in England and Wales, Population at Census Day 2001: Resident Population by Single Year of Age & Sex, United Kingdom, Table P1, at 3 (Rel. 30 Sept. 2002), available at <http://www.ons.gov.uk/ons/rel/census/census-2001-first-results-on-population-in-england-and-wales/first-results-on-population-in-england-and-wales/index.html> (total population in the UK was 58,789,194 and population 0-17 was 13,354,297). See also Region & Country Profiles – Key Statistics, Key statistics – Population, Health and Welfare (Rel. 28 October 2011), available at <http://www.ons.gov.uk/ons/rel/regional-trends/region-and-country-profiles/key-statistics/regional-profiles---key-statistics-tables---oct-2011.xls>. (according to the most recent estimates, children under 16 make up only 18.6 percent of UK population).

available to them seems to lack perspective. Such blanket measures “cannot be considered proportionate to the aim pursued” and the “interference with . . . rights of freedom of expression” would “not [be] necessary in a democratic society.” See, e.g., *Khurshid Mustafa & Tarzibachi v. Sweden*, No. 23883/06, 52 Eur. H.R. Rep. 24, §§ 49-50 (2011) (16 Dec. 2008 judgment).

Likewise, the Organization for Security and Co-operation in Europe has found that state-level blocking policies could result in prior restraint that undoubtedly could have a serious impact on freedom of expression. Accordingly, it has reported that domain-based blocking of websites and platforms carrying legal content would be regarded as a serious infringement of freedom of speech as it is understood under Article 10. See Yaman Adkdeniz, The Office of the Representative on Freedom of the Media, Organization for Security and Co-Operation in Europe, *Report: Freedom of Expression on the Internet, Study of Legal Provisions and Practices Related to Freedom of Expression, the Free Flow of Information and Media Pluralism on the Internet in OSCE Participating States*, at 20-26, 136-80 (<http://www.osce.org/fom/80723>). Based on such concerns, the European Commission dropped a proposal this year that would have required ISPs to block in advance websites that contained alleged images of child sexual abuse. The current UK opt-in proposal is not focused on the issue of child abuse images, and applies instead only to content that adults may legally access. This makes the findings regarding Article 10 even more pertinent.

ICM believes that in free societies, the default position is to allow free access to the open Internet, not to restrict it. To be sure, protecting our children is a vital interest, and a better solution is to provide education and technological tools to facilitate individual choice in those households that may lack the necessary knowledge or skills. In that regard, ICM is proud to be part of an effort to empower parents and schools by adding to the range of tools that responsible content providers and concerned individuals may use to maximize individual choice regarding online content.

Kind Regards,

Stuart Lawley, CEO
ICM Registry, LLC