

From the .XXX Files: Porn Industry Giants Sue Over New Domain Name Registry

November 22, 2011 by [Joshua S. Jarvis](#)

The .xxx domain name registry was [approved by ICANN](#) and is now [taking applications](#) via your friendly neighborhood [domain name registrar](#), so you would be forgiven for thinking that opponents of the .xxx domain are ready to move on and deal with the new regime.

To the contrary, pornography giants [Manwin Licensing International](#) (operator of YouPorn, Pornhub, xTube, and the various Playboy websites) and [Digital Playground](#) (one of the five biggest pornography studios, according to [Wikipedia](#)) are decidedly not ~~aroused~~ amused by [ICM Registry](#) and its .xxx starlet. The two companies filed suit last week against ICM Registry, ICANN, and a few Does in the [United States District Court for the Central District of California](#) alleging, in primary part, claims for antitrust violations under the Sherman Act and unfair competition under California law. The plaintiffs aver that ICANN and ICM Registry “knowingly conspired to eliminate competitive bidding and competition in the markets for certain .XXX TLD registry services, with the intent to injure competition and consumers.”

The [complaint](#) (PDF) alleges that “ICANN awarded ICM [the .xxx] contract without soliciting or accepting competing bids,” thus awarding ICM Registry with monopoly control and “free reign to impose anti-competitive prices and practices.” It explains that owners of trademarks and of other top-level domains are forced to avail themselves of defensive or blocking .xxx domain name registrations to prevent others from registering or using those same names in the .xxx TLD. It claims that the market for blocking services or defensive registrations constitutes “a distinct and separate market,” and that ICM Registry -- by virtue of its registry agreement with ICANN -- has a complete monopoly over this market. Finally, it alleges a variety of anti-competitive practices adopted by ICANN, such as “charging...supra-competitive, monopoly prices for name blocking services,” and that this pricing structure is “far higher than that which would exist in a competitive market, and so constitutes an unreasonable restraint on trade and also harms competition.” The plaintiffs point out that the pricing for [general availability registrations](#) is similarly anti-competitive.

The plaintiffs ask for preliminary and permanent injunctive relief including, “for example,” enjoining the .xxx TLD altogether, ordering “that the .xxx registry contract be rebid to introduce competition,” “and/or imposing reasonable price constraints and service requirements on affirmative registrations in the .XXX TLD.”

It is important to note that the .xxx domain is the result of a lengthy and controversial process entirely unrelated to [ICANN's New gTLD Program](#), and that a sizeable portion (if not the majority) of the *actual* adult entertainment industry was [vocally opposed](#) to the .xxx

registry throughout that process. Among other differences, the New gTLD Program will feature competitive bidding on desirable TLDs, and accordingly it is unclear whether future legal challenges, which are surely in the cards for ICANN and its future registry partners, will be so reliant on antitrust theories. I expect we will find out soon enough. In the meantime, it will be interesting to see whether other adult entertainment companies emerge to challenge ICANN and ICM Registry over .xxx.

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