

Reconsideration Request Form

Version as of 21 September 2018

ICANN's Board Accountability Mechanisms Committee (BAMC) is responsible for receiving requests for reconsideration (Reconsideration Request) from any person or entity that has been adversely affected by the following:

- (a) One or more Board or Staff actions or inactions that contradict ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies);
- (b) One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board's or Staff's consideration at the time of action or refusal to act; or
- (c) One or more actions or inactions of the Board or Staff that are taken as a result of the Board's or Staff's reliance on false or inaccurate relevant information.

The person or entity submitting such a Reconsideration Request is referred to as the Requestor.

Note: This is a brief summary of the relevant Bylaws provisions. For more information about ICANN's reconsideration process, please refer to [Article 4, Section 4.2 of the ICANN Bylaws](#) and the Reconsideration Website at <https://www.icann.org/resources/pages/accountability/reconsideration-en>.

This form is provided to assist a Requestor in submitting a Reconsideration Request, and identifies all required information needed for a complete Reconsideration Request. This template includes terms and conditions that shall be signed prior to submission of the Reconsideration Request.

Requestors may submit all facts necessary to demonstrate why the action/inaction should be reconsidered. However, argument shall be limited to 25 pages, double-spaced and in 12-point font. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered, without limitation.

For all fields in this template calling for a narrative discussion, the text field will wrap and will not be limited.

Please submit completed form to reconsideration@icann.org.

1. Requestor Information

Requestor is:

Name: Namecheap, Inc. (IANA 1068)

Address: Contact Information Redacted

Email: Contact Information Redacted

Requestor is represented by:

Name: Flip Petillion, Jan Janssen, PETILLION

Address: Contact Information Redacted

Email: Contact Information Redacted

Phone Number: Contact Information Redacted

2. Request for Reconsideration of:

Board action/inaction

Staff action/inaction

3. Description of specific action you are seeking to have reconsidered.

On 30 June 2019, ICANN org renewed the registry agreements (“RAs”) for the .ORG, .INFO and .BIZ gTLDs without maintaining the historic price caps, despite universal widespread public comment supporting that the price caps be maintained. This controversial decision goes against the interests of the Internet community as a whole and violates various provisions aimed at protecting those interests set forth in ICANN’s Articles of Incorporation, Bylaws, policies, and the renewal terms of the RAs.

Relatively soon after the renewal of the .org RA between ICANN and PIR, the Internet Society (ISOC) and Public Interest Registry (PIR) announced that PIR was sold to the investment firm Ethos Capital for an undisclosed sum of money. The change of control with PIR in conjunction with the removal of the price caps is particularly damaging to the interests of the Internet community.

ICANN's involvement in the acquisition of PIR by Ethos Capital is unclear at this stage. It is also uncertain whether or not the change of control of PIR has effectuated, and whether or not, and to what extent, ICANN has scrutinized the transaction. On 9 December 2019, ICANN's President and CEO and the ICANN Board Chair declared on ICANN's official website that they want to be transparent about where they are in the process. We learn from this communication that, apparently, PIR notified ICANN of the proposed transaction on 14 November 2019 and that ICANN has asked PIR to provide information related to (i) the continuity of the operations of the .ORG registry, (ii) the nature of the proposed transaction, (iii) how the proposed new ownership structure would continue to adhere to the terms of the current agreement with PIR, and (iv) how they intend to act consistently with their promises to serve the .ORG community with more than 10 million domain name registrations. ICANN submits that it will thoroughly evaluate the responses and then has 30 additional days to provide or withhold its consent to the request. ICANN urged PIR, ISOC, and Ethos Capital to act in an open and transparent manner throughout this process and made clear that it would evaluate the proposed acquisition to ensure that the .ORG registry remains secure, reliable, and stable. While the Requestor applauds ICANN for

acknowledging the concerns that were raised by the Internet community, ICANN's actions are insufficient to ease those concerns and maintain trust in the .ORG community and ICANN's stewardship of the DNS.

4. Date of action/inaction:

The date of the actions and inactions that the Requester is seeking to have reconsidered is unclear. On 9 December 2019, ICANN made clear that PIR had declined ICANN's request to publish PIR's notification relating to the proposed acquisition of PIR. ICANN reiterated its request and expressed the belief that it is imperative that ISOC and PIR commit to completing the "process" in an open and transparent manner, starting with publishing the notification and related material, and allowing ICANN to publish their questions to PIR/ISOC and PIR/ISOC's full responses.

Hence, on 9 December 2019, it became clear that ICANN would not be completely open and transparent about the process *proprio motu*.

5. On what date did you become aware of the action or that action would not be taken?

The Requestor learned about ICANN's actions and inactions on 11 December 2019, *i.e.*, two days after ICANN posted the declaration of its President & CEO and the ICANN Board Chair on its website.

6. Describe how you believe you are materially and adversely affected by the action or inaction:

Requestor is adversely affected by ICANN's failure to act appropriately

upon the (proposed) shift of ownership of the registry operator for .ORG from a non-profit organisation to a for profit investor in conjunction with the removal of price caps in .ORG in. These actions and inactions are likely to have an impact on the Requestor's business.

Even if registrars such as Requestor are given an opportunity to freeze the price for domain name registration renewals by renewing domain names for a period of ten years, this may have an important budgetary impact on Requestor and their customers. Internal budget planning policies of Requestor and its customers may not allow making such long-term decisions and important expenses. Moreover, uncertainty regarding future price increases (including the possibility of increases that exceed historical norms) may cause Requestor's customers not to renew domain names or not to register new domain names in legacy TLDs (.ORG, .INFO and .BIZ).

Allowing individual registry operators to modify key conditions of registry agreements and/or the modification of their ownership leads to far-reaching new rules and non-transparent policies to the sole benefit of a single commercial entity, without granting the Internet community and those entities most affected with a useful and meaningful opportunity to assist in the policy development process. Allowing such radical changes in undocumented and/or non-transparent processes undermines ICANN's multistakeholder model and the GNSO policy development process. These radical changes have immediate repercussions upon the Requestor's business, as it significantly affects the level of trust of customers in the domain name industry. Customer-facing entities, such as the Requestor, are the ones that are most exposed to

the harmful effects of declining levels of trust.

7. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.

All domain name registrants, especially those who have domain names in legacy TLDs¹ with longstanding price caps, will be adversely affected if ICANN not only allows legacy TLDs to raise prices outside of previously established norms, but also engages in a non-transparent and largely undocumented process that may lead to fundamental changes in the ownership of the registry operator and the operation of the TLD.

ICANN's failure to take due account of public comments with respect to the renewal of the .ORG registry agreement and to respond appropriately and transparently to PIR/ISOC's request for approval of the proposed acquisition of PIR calls into question ICANN's objectivity and violates the commitment to openness and transparency articulated in ICANN's Bylaws and Affirmation of Commitments. If ICANN allows the process for approving *casu quo* withholding its approval of the proposed acquisition to run in a non-transparent and closed fashion, what is to stop it from keeping all major decisions and considerations behind closed doors? This causes significant material harm to the Internet community as a whole, who will be unsure of ICANN's objectivity or commitment to abide by its own rules and regulations.

¹ Requestor refers to legacy TLDs when referring to the original gTLDs and those gTLD that have been delegated in accordance with the Proof-of Concept round or the 2004 Sponsored TLD round. Non-legacy TLDs are those gTLDs that were delegated in accordance with the New gTLD Program.

8. Detail of Board or Staff Action/Inaction – Required Information

- Failure to meet ICANN's openness and transparency obligations

In its communication to PIR/ISOC, ICANN correctly states that “*transparency is a cornerstone of ICANN and how ICANN acts to protect the public interest while performing its role.*” However, ICANN is not handling its transparency obligations accordingly. Instead of being completely open and transparent about the process for handling PIR’s request relating to the proposed acquisition of PIR and the consequences for the operation of the .ORG registry, ICANN has yet to make public (i) PIR’s request, (ii) ICANN’s communications responding to this request, (iii) the questions ICANN purportedly asked to PIR, ISOC and/or Ethos Capital, (iv) the answers ICANN received to those questions, (v) the criteria ICANN intends to use for evaluation PIR’s request, and (vi) any other materials related to the above.

From its letter of 9 December 2019, it seems that ICANN is asking permission from PIR/ISOC to publish PIR’s request and answer to ICANN’s questions. It even seems that ICANN is asking some sort of commitment by PIR/ISOC that should allow ICANN to publish ICANN’s questions to PIR/ISOC and PIR/ISOC’s full responses.

The Requestor fails to see why ICANN asks, or should ask, any kind of permission to publish these documents. In the assumption that the renewed Registry Agreement for .ORG applies – the unconditional application of this agreement is being challenged by the Requestor and others in parallel proceedings – Section 7.15 of this renewed agreement provides that only information that *is* confidential trade secret, confidential commercial

information or confidential financial information *can* be confidential information to the extent it has been marked as such. Neither the previous Registry Agreement for .ORG, nor the renewed Registry Agreement for .ORG provide for confidentiality in renewal negotiations or in processes related to a proposed change of control.

Questions that ICANN asks to PIR/ISOC by no means qualify as confidential information. ICANN needs no permission from PIR/ISOC or any third party to publish those questions. The contrary is true: ICANN's openness and transparency obligations mandate ICANN to publish its questions, to employ open and transparent processes, and to be open and transparent to the maximum extent feasible.

Hence, instead of expressing its beliefs and instead of simply urging PIR/ISOC to be more transparent, ICANN can – and should – require that PIR/ISOC responds to ICANN's questions publicly.

After all, PIR/ISOC have been delegated the responsibility to operate one of the Internet's crucial assets, the .ORG registry.

- Failure to apply its standards, policies, procedures, and practices equitably and non-discriminatorily, thereby acting in a manner that does not comply with and does not reflect and respect ICANN's Commitments and Core Values

The process for assigning the operation of the .ORG registry to

PIR/ISOC was the result of careful policy development by the DNSO² and an evaluation process to select the registry operator that best met the evaluation criteria, developed by the Internet community. The DNSO created the policy for the reassignment of the .ORG registry and was involved in the evaluation. The policy for the operation of the .org registry required *inter alia* that (i) the registry be “operated for the benefit of the worldwide community of organizations, groups, and individuals engaged in noncommercial communication via the Internet”, (ii) responsibility for the .org administration be “delegated to a non-profit organization that has widespread support from and acts on behalf of that community”, and (iii) registry fee charged to accredited registrars be “as low as feasible consistent with the maintenance of good quality service”.³ The DNSO’s policy on the reassignment and administration of the .ORG registry has never been amended nor revoked.

The abovementioned requirements of the DNSO’s policy have been taken up in the criteria for assessing proposals from organizations that sought to become the operator of the .ORG registry. These evaluation criteria set forth *inter alia* that (i) the registry operator’s policies and practices “should strive to be responsive to and supportive of the noncommercial Internet user community”, (ii) “ICANN will place significant emphasis on the demonstrated ability of the applicant or a member of the proposing team to operate the TLD registry of significant scale in a manner that provides affordable services with

² The DNSO or the “Domain Name Supporting Organization” was one of organizations within ICANN that develop and recommend policies concerning the Internet’s technical management within their areas of expertise. The DNSO developed policies relating to the domain name system (DNS). The DNSO is the precursor of the GNSO or the “Generic Names Supporting Organization”, ICANN’s policy development body for generic top-level domains.

³ See ICANN, Report of the Dot Org Task Force Adopted by the DNSO Names Council 17 January 2002 and accepted as guidance by the ICANN Board on 14 March 2002.

a high degree of service responsiveness and reliability”, (iii) “[d]emonstrated support among registrants in the .org TLD, particularly those actually using .org domain names for noncommercial purposes, will be a factor in evaluation of the proposals”, (iv) “proposals to operate the .org TLD should provide available evidence of support from across the global Internet community”, (v) a “significant consideration will be the price at which the proposal commits to provide initial and renewal registrations and other registry services”; the registry fee should be “as low as feasible consistent with the maintenance of good-quality service”.⁴

Hence the reassignment of .ORG to PIR/ISOC was not open-ended. Clear and unequivocal commitments were made by PIR/ISOC, who received an endowment of US\$ 5 million in exchange to operating as a non-profit and its commitment of making the .ORG registry the “true global home of non-commercial organizations on the Internet.”

ICANN is correct in stating that the Registry Agreement requires a standard of reasonableness to make its determination to provide or withhold its consent to the proposed acquisition of PIR. ICANN announced that it will thoughtfully and thoroughly evaluate the proposed acquisition to ensure that the .ORG registry remains secure, reliable, and stable. However, it is unclear how ICANN will interpret these evaluation criteria. Unless the Internet community develops a specific policy for evaluating the proposed acquisition, the criteria should comprise the policy and the evaluation criteria that were developed for the reassignment of .ORG. “Reliability” includes that the

⁴ ICANN, *Reassignment of .org Top-Level Domain: Criteria for Assessing Proposals*, posted 20 May 2002.

proposed transition does not affect any of the commitments made by PIR/ISOC when they were awarded the stewardship over the .ORG registry. “Stability” implies that registration and renewal prices must remain stable and “as low as feasible consistent with the maintenance of good quality service”. Stability also means that the governance structure of the .ORG registry is not dramatically changed and provides for sufficient mechanisms and participatory processes for .ORG stakeholders to protect their interests. ICANN should seek to it that strong foundations remain for the “global home of non-commercial organizations on the Internet” which the .ORG registry is.

By allowing for the elimination of price caps in .ORG, ICANN has already failed to apply its policies equitably. By removing the price caps, ICANN has allowed for unstable registration and renewal prices and contravenes established policy that these prices must be as low as feasible consistent with the maintenance of good quality service. This policy violation would only be exacerbated if ICANN were to allow PIR be acquired by a for-profit company.

9. What are you asking ICANN to do now?

The Requestor is asking that ICANN reconsider the lack of openness and transparency with respect to the renewal of the .ORG Registry Agreement⁵ and the actions surrounding the (proposed) acquisition of PIR

⁵ As a matter of fact ICANN should reconsider the lack of openness and transparency with respect to the renewal of the Registry Agreements for all legacy TLDs, including .INFO and .BIZ, as was previously asked for, as part of the request that the ICANN Board include or maintain price caps in all legacy TLDs.

and ICANN's approval process. To the extent ICANN's actions and/or inactions lead, have led to, or risk leading to the approval of the change of control, the Requestor is seeking to have those actions and inactions reconsidered with a view to preserving the non-profit character of .ORG, and observing the criteria that have led to the reassignment of the .ORG registry to PIR/ISOC.

Based on the information that is publicly available regarding the proposed acquisition of PIR, the Requester considers that there are sufficient grounds which mandate ICANN to withhold its approval.

The Requestor asks that ICANN reverse its decision to eliminate price caps in the .ORG TLD and that it includes (or maintains) price caps in the .ORG TLD.⁶

The Requestor asks that ICANN ensures that domain name registration and renewal fees in .ORG are "as low as feasible consistent with the maintenance of good quality service". To the extent PIR cannot live up to its commitments made during the reassignment process for the .ORG registry, the Requestor asks that ICANN reassigns the .ORG registry in accordance with the DNSO policy for reassignment (unless the community comes up with an updated policy).

In the event that ICANN does not immediately grant this request, the

⁶ As a matter of fact, ICANN should reverse its decision to eliminate price caps in legacy TLDs and includes (or maintains) price caps in all legacy TLDs (including .ORG, .INFO, and .BIZ). Requestor is aware that this request is currently being discussed in the framework of a cooperative engagement process, but Requestor wants to give the ICANN Board the opportunity to reconsider its decision in view of the recent events with respect to .ORG.

Requestor asks that ICANN engage in conversations with the Requestor and that a hearing be organized. In such event, the Requestor requests that, prior to the hearing, ICANN (i) provides full transparency regarding negotiations pertaining to the reassignment, renewal and amendments of the .ORG, .BIZ and/or .INFO Registry Agreements, (ii) provides full transparency regarding the (proposed) change of control of Public Interest Registry, and (iii) provides the documents requested in today's DIDP request by the Requestor.

10. Please state specifically the grounds under which you have the standing and the right to assert this Reconsideration Request, and the grounds or justifications that support your request.

The Requestor is an ICANN-accredited registrar. As indicated above, the Requestor is adversely affected by the removal of price caps in .ORG in conjunction with ICANN's failure to act appropriately upon the (proposed) shift of ownership of the registry operator for .ORG from a non-profit organisation to a for profit investor. These actions and inactions are likely to have an impact on the business (domain name registration business as well as additional services, such as domain name hosting). More than 700 of the Requestor's customers have submitted public comments stating how they will be harmed by removing the price caps. All of the Requestor's customers, as well as the Internet community as a whole, are harmed by the uncertainty about both (i) possible price increases in legacy TLDs, and (ii) ICANN and the registry operator of .ORG observing the commitments that are made for operating the .ORG registry.

Through its actions and inactions, ICANN is allowing individual registry

operators to modify key aspects of registry agreements and/or their ownership without the necessary openness and transparency. If ICANN fails to remedy this situation, this will inevitably lead to the creation far-reaching new rules and non-transparent policies to the sole benefit of a single commercial entity, without granting the Internet community and those entities most affected with a useful opportunity to assist in the policy development process. Allowing such radical changes in undocumented and/or non-transparent processes undermines ICANN's multistakeholder model and the GNSO policy development process.

11. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)

Yes

No

11a. If yes, is the causal connection between the circumstances of the Reconsideration Request and the harm substantially the same for all of the Requestors? Explain.

12. Are you bringing this Reconsideration Request on an urgent basis pursuant to Article 4, Section 4.2(s) of the Bylaws?

Yes

No

12a. If yes, please explain why the matter is urgent for reconsideration.

13. Do you have any documents you want to provide to ICANN?

At this stage, all relevant documents are believed to be in ICANN's possession. For ICANN's convenience, we have attached today's DIDP request by the Requestor as **Annex 1**.

Terms and Conditions for Submission of Reconsideration Requests

Reconsideration Requests from different Requestors may be considered in the same proceeding so long as: (i) the requests involve the same general action or inaction; and (ii) the Requestors are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is substantially the same for all of the Requestors. Every Requestor must be able to demonstrate that it has been materially harmed and adversely impacted by the action or inaction giving rise to the request.

The BAMC shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The BAMC may summarily dismiss a Reconsideration Request if: (i) the Requestor fails to meet the requirements for bringing a Reconsideration Request; or (ii) it is frivolous. The BAMC's summary dismissal of a Reconsideration Request shall be documented and promptly posted on the Reconsideration Website at <https://www.icann.org/resources/pages/accountability/reconsideration-en>.

Hearings are not required in the Reconsideration Process; however, Requestors may ask for the opportunity to be heard. The BAMC retains the absolute discretion to determine whether a hearing is appropriate, and to call people before it for a hearing. The BAMC's decision on any such request is final.

For all Reconsideration Requests that are not summarily dismissed, except where the Ombudsman is required to recuse himself or herself and Community Reconsideration Requests, the Reconsideration Request shall be sent to the Ombudsman, who shall promptly proceed to review and consider the Reconsideration Request. The BAMC shall make a final recommendation to the Board with respect to a Reconsideration Request following its receipt of the Ombudsman's evaluation (or following receipt of the Reconsideration Request involving those matters for which the Ombudsman recuses himself or herself or the receipt of the Community Reconsideration Request, if applicable).

The final recommendation of the BAMC shall be documented and promptly (i.e., as soon as practicable) posted on the Reconsideration Website at <https://www.icann.org/resources/pages/accountability/reconsideration-en> and shall address each of the arguments raised in the Reconsideration Request. The Requestor may file a 10-page (double-spaced, 12-point font) document, not including exhibits, in rebuttal to the BAMC's recommendation within 15 days of receipt of the recommendation, which shall also be promptly (i.e., as soon as practicable) posted to the ICANN Reconsideration Website and provided to the Board for its evaluation; provided, that such rebuttal shall: (i) be limited to rebutting or contradicting the issues raised in the BAMC's final recommendation; and (ii) not offer new evidence to support an argument made in the Requestor's original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request.

The ICANN Board shall not be bound to follow the recommendations of the BAMC. The ICANN Board's decision on the BAMC's recommendation is final and not subject to a Reconsideration Request.

By submitting my personal data, I agree that my personal data will be processed in accordance with the ICANN [Privacy Policy](#), and agree to abide by the website [Terms of Service](#).

Date: 8 January 2020

A handwritten signature in blue ink that reads "Flip Petillion". The signature is written in a cursive style and is positioned above a solid black horizontal line.

Flip Petillion

A handwritten signature in blue ink that reads "Jan Janssen". The signature is written in a cursive style and is positioned above a solid black horizontal line.

Jan Janssen