



Maarten Botterman
Chair
ICANN Board of Directors
Electronic correspondence

Date 2020-02-24
Reference Your letter of 13 February

Dear Maarten,

Thank you for your letter of 13 February regarding the Public Interest Registry (PIR) "Notice of Indirect Change of Control and Entity Conversion" (the "Request"). I respond on behalf of the Internet Society Board of Trustees.

Before beginning, I'd like to point out that the Internet Society is not a party to any contract with the Internet Corporation for Assigned Names and Numbers (ICANN). Nonetheless, we remain committed to working together for the good of the Internet and therefore are responding fully to your questions.

I also want to highlight the references to the 2002 process and what you've referred to as the "2002 Commitments". The 2002 process culminated in a set of agreed upon obligations that were incorporated into the formal registry agreement between PIR and ICANN, which has been amended and revised several times over the years (including in 2006, 2013, and 2019). It is also important to note that the registry agreement between PIR and ICANN clearly states that it "constitutes the entire agreement of the parties" thereto "pertaining to the operation of the TLD and supersedes all prior agreement, understanding, negotiations and discussions, whether oral or written, between the parties on that subject."¹

With these clarifications, please see our responses below.

1. **Since the .ORG TLD was awarded to ISOC in 2002, ISOC has appeared to support PIR's operation of the .ORG TLD in line with ISOC's 2002 commitments to the Internet community on how it would, among other things, differentiate the .ORG TLD, ensure responsiveness to the non-commercial community, and foster support from .ORG registrants (the "2002 Commitments"). Is it ISOC's view that these commitments will continue to be maintained with this new structure, and what, if anything, have you done to ensure that? Please explain, and reference supporting documentation where available. (See <https://archive.icann.org/en/tlds/org/applications/isoc/>)**

The .ORG TLD has indeed been operated by PIR with an eye to differentiating the .ORG TLD from other TLDs, and PIR has been responsive to the non-commercial community. We believe that the best test of that is the

¹ Registry Agreement between Internet Corporation for Assigned Names and Numbers and Public Interest Registry § 7.10 (June 30, 2019).



support of .ORG registrants, which is most reliably measured by their decision to use .ORG. The TLD grew from fewer than 3 million registrations in 2002 to roughly 10 million today, which is the most obvious form of support of registrants. Since PIR will continue to be the registry operator after the closing of the proposed transaction, and since both PIR and Ethos have announced plans to maintain the existing policies, and since that is the business that Ethos is paying a large sum of money to acquire, we believe that this model of business operation will continue. PIR has previously, in its correspondence with ICANN, outlined a number of commitments that Ethos has made public about how it will operate PIR in the future. We are pleased to note that PIR and Ethos have also announced their intent to amend the .ORG Registry Agreement in order to include a Public Interest Commitment (PIC) that can be enforced by both ICANN and by the community through ICANN's processes.

2. There have been public statements that ISOC received multiple bids for the sale of PIR. Did ISOC solicit any responses from bidders as to how each would continue to uphold any/all of the 2002 Commitments?

· If no, why not?

· If yes, what did ISOC request, and how were the responses evaluated and taken into account when entering into the proposed transaction with Ethos Capital?

The bids that were received at different times are covered by various forms of non-disclosure agreement, so it would be wrong for us to discuss those with you. We are sure that you have had the opportunity to review the materials about the Ethos bid that PIR has provided in its responses to previous questions.

When we received it, the Ethos proposal made clear to us that they wanted to build a greater business upon the legacy of PIR. We are confident that is how .ORG will continue to differentiate itself, support the non-commercial community, and remain healthy and vital for the long term.

3. What, if any, restrictions or conditions limit ISOC's ability to sell PIR? Are there any conditions or restrictions imposed by Pennsylvania law or other external sources that you are aware of, or that you have considered? Are there requirements for how the funds received from the sale of the non-profit entity of PIR must be reinvested?

As a technical matter, the Internet Society is not "selling" PIR. We think previous material that PIR provided, dated 20 December 2019, outlined this, but to recap: the Internet Society, acting as the sole member of PIR has approved PIR converting from a nonprofit corporation to a limited liability company (LLC), with the LLC interest held by Connected Giving Foundation (CGF), a new nonprofit organization of which the Internet Society is the sole member in the same manner as Internet Society is currently the sole member of PIR. CGF will then sell its LLC interest in the converted PIR to Ethos. The proceeds from that sale will be held by CGF and will be managed like an endowment. This means that the investment income from the proceeds will be used to support CGF's charitable purposes, which are consistent with PIR's current charitable purposes to operate for the benefit of, and to carry out the purposes of, the Internet Society.

CGF and the management and investment of the proceeds from the sale will be governed by applicable Pennsylvania law on charitable nonprofit corporations and prudent investment of charitable funds (which are



the same laws that currently apply to PIR), as well as the applicable federal tax laws. In addition, a Pennsylvania court must rule on the permissibility of the transaction itself.

- 4. What has Ethos Capital committed to do in regard to the 2002 Commitments? And are such commitments included in any of the transaction documents, organization documents or elsewhere in a manner that insures they will be sustained and enforceable by .ORG registrants or others in the future?**

As we noted above, there are no contractual agreements between the Internet Society and ICANN, so we do not really understand what enforceable commitments could have been incorporated into the transaction. ICANN and PIR have entered into a registry agreement that contains all agreements between the parties with respect to the operation of the .ORG registry. PIR will continue to be subject to the current registry agreement in place between it and ICANN, and the terms of the agreement will continue to be enforceable in the same manner they are currently enforceable. PIR has done an exceptional job in managing the .ORG registry since 2002, and we have every reason to suppose that PIR will continue operating the .ORG registry in the same exceptional manner following the indirect change of control.

Ethos and PIR also have announced publicly, on 21 February 2020, a number of measures to take effect as binding Public Interest Commitments that will be attached to the .ORG registry agreement. Assuming they are adopted, these will place into the agreement governing .ORG (no matter who owns PIR) commitments about which the community has expressed concern. We think the willingness of Ethos to make such commitments is further evidence that Ethos wants to be a responsible member of the ICANN community.

- 5. What assurances has Ethos Capital made that it will invest in differentiation of the .ORG TLD space, remain responsive to the needs, concerns, and views of the noncommercial Internet user community, and support open, transparent, and participatory process by which .org operating policies are initiated, reviewed, and revised in a manner that reflects the interests of .org domain name holders? How will these assurances be enforceable by .ORG registrants or others?**

On <https://keypointsabout.org/faq>, one can find a discussion of the commitments Ethos Capital has made with respect to .ORG. Of course, PIR will continue to be subject to the current registry agreement in place between it and ICANN, and the terms of the agreement will continue to be enforceable in the same manner they are currently enforceable. PIR has also submitted PICs to ICANN, and announced them publicly on 21 February 2020; they will be enforceable in the same manner as PICs are otherwise enforceable under ICANN's processes.

- 6. What public interest commitments has Ethos Capital made and are such commitments included in any of the transaction documents, organizational documents or elsewhere in a manner that ensures they will be sustained and enforceable by .ORG registrants or others in the future?**

We've included the answer to this in the response to question 5 above.

- 7. Did ISOC seek any inputs or comments from the registrants of .ORG or other interested stakeholders prior to engaging in a process to sell PIR, considering the terms of bids or evaluating bids for the sale of PIR? If so, please describe how this input was solicited and the outcomes**



Despite our natural inclination to have consulted widely, we could not do it in this case. The Internet Society Board of Trustees are subject to fiduciary obligations that require them to act in the best interests of the organization and its charitable mission. An extended consultation process with private interests to discuss confidential information would have been inconsistent with these fiduciary obligations and applicable non-disclosure agreements. We also believed when considering the Ethos proposal, and believe now, that such a lengthy consultation would have been bad for .ORG, for its registrants, and for PIR.

- 8. Did ISOC consult with the .ORG Advisory Council prior to engaging in a process to sell PIR? If so, please describe how this input was solicited and the outcomes.**

That would have been improper, as outlined in the response to question 7. The .ORG Advisory Council is part of PIR and not the Internet Society.

- 9. We understand that ISOC might have consulted with the .ORG Advisory Council either as part of the consideration of terms of bids for the sale of PIR or for the evaluation of the proposed sale to Ethos Capital. Can you confirm if this happened, how the input was solicited, and the outcomes of that consultation? If ISOC proceeded counter to any .ORG Advisory Council recommendations, please provide the rationale for such action.**

See response to question 8.

- 10. We understand that ISOC received a written proposal from Ethos Capital in September 2019. Were any prior proposals made or prior discussions had with Ethos Capital or any of their representatives or advisors? If yes, when did those discussions occur?**

Ethos Capital contacted the Internet Society shortly before it submitted a formal proposal with respect to the proposed transaction and informed the Internet Society of its plan to submit such a proposal. This contact occurred within a week or so prior to Ethos Capital submitting its proposal.

- 11. How is the proposed transaction with Ethos Capital intended to maximize the chances that .ORG serves registrants and the community now and in the future and ensure that .ORG is able to maintain and grow as a differentiated TLD?**

The proposed transaction is not expected to change PIR's operation of the .ORG registry as a differentiated TLD. Over the past several years, users' interactions with domain names has been declining due to changes in user interface designs and the rise of apps. This does not mean that domain names are irrelevant, but it does mean that the market is changing. At the same time, ICANN, through its community processes, affected the market both by adding more than 1,000 new TLDs to the market and by its apparent drift towards adding yet more. Again, that is neither a good or bad thing, but just a fact of the business environment. All of this means that PIR is in a dynamic market. As a company in a mature but dynamic market, the Internet Society believes that PIR will be in a better position to address these changes as a for-profit than it currently can as a non-profit. PIR will be able to attract outside investment through Ethos Capital and be able to remain more nimble in changing times. It allows PIR to thrive and invest in the business of looking after its portfolio of TLDs, to the benefit of all registrants, while also securing funding to support the mission of the Internet Society so it is no longer depends on PIR.



Of course, should the transaction not proceed, PIR will retain its current structure with the Internet Society as its sole member, and PIR will continue to ensure that all the TLDs it operates remain strong, successful, and exemplary.

12. Does ISOC believe the proposed sale to Ethos Capital (a for profit entity) is in the public interest and benefits registrants/.ORG community? If so, please describe how.

See response to question 11.

13. How will the .ORG registrants/community be served through the proposed endowment that ISOC will receive? Please describe how, in deciding to sell PIR to Ethos Capital, ISOC balanced the interests of the .ORG community with ISOC's interest in achieving a sizeable endowment to support ISOC's future operations separate from PIR and .ORG?

Please see response to question 3. Although we appreciate that the .ORG community includes many nonprofit organizations that utilize the TLD for their domain names, please recall that, as a public charity, the Internet Society is required to operate for the benefit of the public and not for any particular individual or private interest. The Internet Society pursues its mission by supporting and promoting the development of the Internet as a global technical infrastructure, a resource to enrich people's lives, and a force for good in society. This mission serves all of the public, including .ORG registrants.

As discussed in the response to question 11, the proposed transaction will place PIR in a position to better address the changing market and to grow and expand as a mature company in that market. The proceeds from the sale, although seemingly sizeable, will be invested and the resulting income will serve to replace the revenue currently generated by PIR to support the mission of the Internet Society. The Internet Society does not expect to have any significant increase in annual funding available to it from the proceeds of the transaction—rather, it will have a more predictable income stream that will not be dependent on one market (i.e., the .ORG market) as its source of support.

14. Did ISOC evaluate the financial structure of the proposed transaction in order to ensure that PIR will have the ability to operate the registry in a stable manner in the years to come and continue to support the interests of the .ORG community? To this end, has ISOC required any commitments from Ethos Capital to ensure that the level of debt service or anticipated capital distributions will not adversely impact the operation of the registry?

Yes. The Internet Society evaluated the finances of the transaction. It should be remembered that all the revenues that currently flow from PIR to the Internet Society and the Internet Society Foundation will now be available instead for PIR's use. In addition, the debt that Ethos Capital has taken on as part of this proposed transaction is quite small for a transaction of this size. This is not a "leveraged buy-out" of the sort of that often strips companies of needed capital.

15. PIR has informed ICANN that the Connected Giving Foundation will be using the funds received in this proposed transaction "in furtherance of its mission to support an open, globally-connected, secure, and trust-worthy Internet". Can you confirm this statement from PIR? Can you also confirm that none of the funds have been earmarked or are intended to be distributed to enrich any individual or entity (other than fees and expenses of advisors to the proposed transaction)?



Confirmed as to the first part. In respect of the second part, there is a modest staff retention program for PIR staff that was outlined in the materials PIR previously sent to ICANN; otherwise the funds will not be distributed to enrich anyone.

The Articles of Incorporation of the Connected Giving Foundation is also a public document that may be requested directly from the [Pennsylvania Department of State](#).

- 16. Given the public reaction to the announced sale of PIR, will ISOC commit to completing any additional engagement with the .ORG community prior to consummating the proposed transaction with Ethos Capital?**

We certainly wish to engage with the community, and we have been trying very hard to do so. We have made ourselves available repeatedly under many circumstances to address concerns that have been raised, and will be joining further events. It is our understanding, however, that getting either a complete list or a random sample of the contact information for .ORG registrants would be a violation of agreements that PIR and the various registrars have with ICANN, as well as a violation of various privacy laws around the world and the Internet Society's and PIR's own privacy policies. It would be a similar violation to get the contact information (or a random sample) of everyone who relies upon .ORG registrations.

- 17. Is there any other information you would like to share about how the sale of PIR to Ethos Capital would protect and serve the interests of the .ORG registrants and community?**

We believe we have offered ample reasons why this would be good for everyone on the Internet, including .ORG registrants and the .ORG community.

- 18. Should ICANN understand from ISOC's announcement of the proposed transaction with Ethos Capital that, even if this proposed transaction were not to conclude, it remains ISOC's intention to divest itself of PIR and no longer have an ownership interest in a registry operator? In other words, has ISOC made a determination to no longer be involved in the .ORG registry, and if so, where was that decision made and on what basis did you decide to do so? Are there board minutes, a rationale or an economic analysis behind comments that have been made relating to this?**

No, the Internet Society has made no such determination.

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We hope this answers your questions, and we trust that ICANN will complete its processes in a timely manner.

Yours sincerely,

Gonzalo Camarillo
Chair, Internet Society Board of Trustees