

From: Rafik Dammak

Date: Wednesday, April 29, 2020

To: Maarten Botterman, Goran Marby

Subject: NCSG statement on PIR Transaction and Proposed Public Interest Commitments

Dear Maarten, Goran,

Please find attached NCSG statement on PIR Transaction and Proposed Public Interest Commitments and we are looking that it will be considered for the board decision on .org.

Best Regards,

Rafik

NCSG Statement on the "PIR Transaction and Proposed Public Interest Commitments Update"

The NCSG represents the interests of non-commercial domain name registrants and end-users in the formulation of Domain Name System (DNS) policy within the Generic Names Supporting Organisation (GNSO). We are proud to have individual and organisational members in over 160 countries, and as a network of academics, Internet end-users, and civil society actors, we represent a broad cross-section of the global Internet community. Since our predecessor's inception in 1999 (the Non-Commercial Domain Name Holders Constituency, NCDNHC), we have facilitated global academic and civil society engagement in support of ICANN's mission, stimulating an informed citizenry and building their understanding of relevant Domain Name System (DNS) policy issues. We believe our evidence-informed public interest-orientated contributions provide balance against state and market interests.

Back in November 2019, the Noncommercial Stakeholders Group issued a letter to the ICANN Board advocating for Ethos Capital to uphold its previously acquired obligations with regards to noncommercial registrants. The letter also pointed out that it was ICANN's duty to enter into negotiations with Ethos Capital to ensure that its operation of the ORG domain conforms to criteria upon which the original award of ORG was contingent (related to noncommercial registrants).

Therefore, this present letter showcases some points raised within our Stakeholder Group with regards to the proposed PIR transaction regarding topics such as **(a) Freedom of Expression provisions on the proposed PICs, (b) Extended registration terms for (c) .Org registrants, .org Stewardship Council (OSC) and (d) OSC Representation and NCSG participation.**

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Lack of a Freedom of Expression related provision on the PIC

Due to concerns regarding eventual restrictions to rights such as Freedom of Expression, NCSG asked that the PIC text included both a process-oriented commitment to allow the Org Stewardship Council to veto "modifications" of RO's policies pertaining to free expression and a positive commitment to ensuring rights such as freedom of expression in the .Org domain. Despite stating this point previously in statements and to the PIR Leadership team, the lack of mention to this request on the modified PIC makes it harder for us to fully support the revised document.

Extended registration terms for .org registrants

With regards to the possible extension of registration terms for .org registrants this was also a topic in which NCSG pointed out the need for a stronger PIR commitment. Despite understanding the eventual policy changes entailed by the proposed change, we would like to, once again, state the need for a stronger PIR involvement in creating such a change.

.Org Stewardship Council (OSC)

The proposed PICs dated April 15th, 2020 included that the “Registry Operator will, in accordance with the .ORG Stewardship Council charter (the “Charter”), notify and consult with the .ORG Stewardship Council with respect to modifications proposed by Registry Operator to its policies in the .ORG domain name space regarding: (x) censorship and freedom of expression; and (y) use of .ORG registrant and user data (the “Designated Policies”). The .ORG Stewardship Council will have authority to provide independent advice on and a binding right to veto modifications proposed by Registry Operator to the Designated Policies.”

The NCSG believes that two additional measures can be taken to make the role of the OSC more effective, which should be reflected in the proposed PICs as well as the draft OSC charter:

1. The OSC should be given the mandate to review PIR policies for .org (such as any anti-abuse policies adopted by the registry) to ensure that these policies do not negatively impact non-commercial registrants in the .org space, with particular emphasis on their ability to express themselves freely and the processing and use of registrant data by the registry.
2. PIR should adopt a complaints system, where .org registrants are able to appeal decisions made by the registry in the implementation of its policies concerning freedom of expression and processing/use of registrant data. The OSC should be a party in the review of any such complaints, and should be able to overturn registry decisions, if the decisions are found to conflict with existing PIR policies (i.e. if implementation of PIR policies are not consistent with their intent).

Furthermore, the proposed PICs state that “..., Registry Operator reserves the right at all times to ensure compliance in its sole judgment with applicable laws, regulations and ICANN policies.” (emphasis added)

PIR cannot reasonably be expected to follow advice from the OSC, in the event that this advice conflicts with the registry’s contractual obligations towards ICANN. However, the OSC should be given the mandate to enter into discussions with PIR on policy recommendations it advocates for in the course of gTLD policy development at ICANN. Again, this particularly concerns the development of policy recommendations that may impact freedom of expression and/or the processing of non-commercial registrants’ gTLD registration data.

Although PIR cannot be expected to follow OSC advice, which would conflict with ICANN policies, the OSC should be in a position to advise PIR in the course of the development of these policies, particularly where the policies in question impact the OSC’s mandate.

OSC Representation and NCSG participation

NCSG also informed the PIR leadership of the need for more independence on the proposed ORG Stewardship Council (OSC). Despite being a point that was mentioned on the new PICs and PIR statements, we believe the proposed process could still be improved. Specifically, they say “The PIR Board will not appoint the first five members of the .ORG Stewardship Council. To ensure independence, Ethos will engage an internationally-recognized executive search firm to oversee and manage a process for identifying candidates to be the inaugural members. The search firm will solicit

applications from a variety of .ORG Stakeholders, including ICANN's Non-Commercial Stakeholder Group (NCSG) and At-Large Advisory Committee (ALAC) and provide its proposed nominations to a Selection Committee established by the PIR Board".

When it comes to the ORG Stewardship Council representatives, we would like to state the following:

(a) From what it seems, even with the new proposed selection process, PIR will still be responsible for selecting all the OSC members. Additionally, despite the mention to NCSG on the document, there are no guarantees that the selection committee nor PIR will ensure NCSGs participation on the OSC. We also must note that ALAC contains, and to some extent is more representative of, commercial users as well as non-commercial users and has no historical connection to the ORG domain;

(b) PIR and Ethos Capital should ensure that the OSC members include multiple and well-known experts in topics such as free speech and freedom of expression, human rights and copyright/trademark/fair use. Also, as pointed above, it is of utter importance that the selected appointees hold the same compromise with ensuring that the registry keeps its alignment with the Noncommercial registrants.

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Thank you again for opening this conversation up to the community. It is utterly important for ICANN to continue to foster opportunities for its community to share their perspectives on important issues that impacts us, and we trust you will find our recommendations helpful. Finally, the NCSG would be happy to participate in any further discussions related to the subject of this present contribution in order to answer any clarifying questions that you may have regarding the contents of this document.