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Mr. Maarten Botterman, Chairman of the ICANN Board of Directors

Mr. Göran Marby, CEO and President of ICANN

Object: updates to the proposed voluntary Public Interest Commitments by Public Interest Registry

Mister Chairman, dear Maarten,
Mister President and CEO, dear Göran,

As you know, France has closely followed, since its announcement on November 14th 2019, the proposed change of control of Public Interest Registry (PIR) from the Internet Society to the investment fund Ethos Capital and its re-registration as a for-profit company. As you may recall, I have personally had the opportunity to send you a letter, on February 7th, containing France's comments, reservations and advice concerning this project. (<https://www.icann.org/en/system/files/correspondence/verdier-to-marby-07feb20-en.pdf>).

France would like first to commend the ICANN Board and ICANN Org for their proactive attitude and for trying to build a climate of transparency around this issue of great importance for the whole Internet community, for instance by asking PIR numerous precise questions or convening a specific dedicated Public Forum during ICANN 67. We noted with satisfaction that ICANN did not consider the transfer of property of PIR a mere technical issue, but one of much greater scope and potential impact, which is also France's analysis of the situation, and that ICANN considered itself able to evaluate the reasonableness of the project "under the totality of circumstances, including the impact on the public interest and the interest of the .org community" (in the letter sent by Jones Day on behalf of ICANN on February 13th: <https://www.icann.org/en/system/files/correspondence/levee-to-boglivi-13feb20-en.pdf>).

France is finally grateful to the ICANN Board and PIR for agreeing to postpone the Board's decision on this issue several times. This has notably allowed the whole ICANN Community to engage in an active and highly-needed debate, especially during ICANN 67.

France saw the voluntary Public Interest Commitments (PICs) proposed by PIR on February 21st as a first step, however modest, in the right direction. In my letter of February 7th, I expressed concerns regarding privacy and freedom of expression and these PICs partly address them. We also welcome the fact that the modifications transmitted to ICANN on April 7th will increase the clarity of the commitments. However, we deem that these PICs



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have provided largely insufficient guarantees so far and that the latest modifications are but minor tweaks that do not solve the two main drawbacks affecting the PICs:

- (1) **The necessity, for the proposed Stewardship Council, to reach a two-thirds majority in order to reject “Designated Policy Changes”,** i.e. changes to PIR policy proposed by the PIR Board (.ORG Stewardship Council Charter, principle 12). In the eyes of France, such a high threshold would render the Council powerless and unable to block most problematic decisions. Since PIR has committed to recruiting individual with the highest degree of “integrity”, “high ethical standards” or “business acumen”, among other qualities (<https://www.thestewardshipcouncil.org/nominations>), it should allow a simple majority of these eminent members to defeat decisions by the PIR Board it considers problematic;

- (2) **The fact that the PIR Board will be given excessive power in the appointment of Stewardship Council members,** especially that five of the seven “founding” Council members will be appointed directly by the PIR Board (.ORG Stewardship Council Charter, principle 4). Even with the selection process carried out by an independent executive search firm (Heidrick & Struggles) enjoying “vast experience” in its field, the final appointment decision regarding these five members’ appointment will still lie with the PIR Board. Furthermore, since the two other “founding” members and all subsequent Stewardship Council members will need approval from both the PIR Board and the incumbent Stewardship Council, the appointment process of every Council member will always trace back to an anointment by the PIR Board, thus defeating the intent to create an “independent a transparent body” (<https://www.keypointsabout.org/blog/firm-commitments-to-org-community>). While we welcome the definition of detailed and ambitious criteria for the selection of future Stewardship Council members (<https://www.thestewardshipcouncil.org/nominations>), including guarantees strongly restricting links between PIR Board members and potential Stewardship Council members, we believe that the PIR Board should not play any role in the nomination of the Council’s members, be it of the initial or subsequent members.

We therefore call PIR and Ethos Capital to further strengthen their commitments in order to address the two aforementioned issues. Although our other reservations concerning the content of the PICs (such as the fact that the limitation of price increases to 10% yearly would be dropped altogether after 8 years) or the general process of property transfer of PIR (such as the lack of transparency regarding the chain of ownership linking Ethos, PIR and the



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“mysterious” companies identified as Purpose Domains Direct LLC, Purpose Domains Holdings LLC and Purpose Domains Investments LLC) still remain, we believe PIR and Ethos Capital can make another step in the right direction by answering these two issues.

Finally, we regret that the ICANN Community has only been given seven days to react to these updates to these PICs. While we understand that this is due to the proximity of the April 20th deadline, we believe that the latter should be extended in order to give the Community a full month, as is traditionally the case, to provide its comments. By agreeing on a new extension, the ICANN Board and PIR would further demonstrate commitment to genuine public debate, at a time when it is direly needed. Along with other parties, we would also welcome more information about ICANN's concrete criteria for approving the transfer request and the process by which it will evaluate those criteria.

This would also be a welcome sign of understanding, when many organizations and companies are having difficulty adapting to the current Covid-19 crisis, and may find it difficult to provide comments in such a short timeframe.

Finally, we would like to thank you for this new opportunity to make our concerns heard. We strongly hope our comments and suggestions will find echo at PIR and Ethos Capital and we encourage the ICANN Board to persist in its commendable and proactive treatment of the issue.

Sending you our best regards and sincere wishes of good health to you and your families in these difficult times,

Henri Verdier
Ambassador for Digital Affairs