



March 4, 2020

**BY ELECTRONIC MAIL**

Internet Corporation for Assigned Names and Numbers (ICANN)  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA. 90094-2536  
ATTN: John Jeffrey, General Counsel and Secretary

Re: February 19, 2020 Second Request for Additional Information

Dear John:

We are in receipt of ICANN's February 19, 2020 letter providing Public Interest Registry with a set of additional questions related to our November 14, 2019 notice to ICANN regarding a proposed indirect change of control. We provide our answers in the enclosed.

Best regards,

**PUBLIC INTEREST REGISTRY**

A handwritten signature in blue ink, appearing to read "Brian Cimboric".

Brian Cimboric  
Vice President, General Counsel

Enclosure

cc: Russ Weinstein, Senior Director, gTLD Accounts & Services, ICANN  
Jon Nevett, President and CEO, Public Interest Registry

## Response to February 19, 2020 Questions

Public Interest Registry (“**PIR**”) is providing its responses to ICANN’s February 19, 2020 set of additional questions (“**ICANN’s Questions**”) regarding PIR’s proposed indirect change of control (the “**Transaction**”). At the outset, we note again that many of ICANN’s Questions are outside the scope of its review for an indirect change of control and deviate from the ICANN-published process.<sup>1</sup> Regardless, we understand that members of the community have concerns regarding this Transaction and the future of .ORG. In order to further address community concerns, we answer virtually all of ICANN’s Questions publicly and without redactions; only one Exhibit is provided just to ICANN due to contractual confidentiality restrictions.

To address the concerns raised by members of the .ORG Community, on February 21, Ethos Capital, LLC (“**Ethos**”) announced a series of proposed contractually binding commitments in the form of an amendment to Specification 11 of the .ORG Registry Agreement to include new Public Interest Commitments (the “**PIC**”). As a result, these commitments would become legally binding and enforceable by ICANN, as well as by members of the community through ICANN’s [Public Interest Commitment Dispute Resolution Procedure](#) (“**PICDRP**”) following the consummation of the Transaction. Ethos also provided clarity on the .ORG Stewardship Council and released the Council’s Charter. Both of those documents are enclosed as **Attachment 1** and **Attachment 2**, respectively. PIR and Ethos will continue to engage with the .ORG community around these commitments.

PIR already has provided more information and documentation to ICANN, and released more information publicly, for this indirect change of control than any other change of control (whether direct or indirect) in the history of ICANN. With these responses, we now consider the diligence production process complete and await ICANN’s decision to consent to the Transaction or to withhold consent on or before March 20, 2020.

In response to ICANN’s Questions:

### **The .ORG Community**

As noted above, in response to concerns raised by stakeholders in the .ORG Community, Ethos has proposed several key contractually-binding commitments to protect the .ORG Community to be enacted following the consummation of the Transaction. These safeguards in the form of a PIC (an amendment to Specification 11 of the .ORG Registry Agreement) and the Stewardship Council Charter address the primary concerns raised regarding the Transaction, including its effect on: (1) affordability; (2) policies regarding freedom of expression; (3) policies regarding monetization of registrant and .ORG user data; and (4) PIR’s continued commitment to transparency and to the .ORG Community.

### **Public Interest Commitments**

The PIC provides the following safeguards for the protection of the .ORG Community:

<sup>1</sup> See ICANN’s Change of Control Guide, Appendix D: <https://www.icann.org/en/system/files/files/change-of-control-guide-13dec17-en.pdf>.

1. **Price Constraints.** For a period of 8 years from the Effective Date of the current Registry Agreement (roughly 7 years from now) fees charged to registrars for initial or renewal registration of a .ORG domain name would not increase by more than 10% per year on average, under a formula that does not permit front loading of those price increases. This voluntary price constraint would not change the notice requirements in the Registry Agreement of any price increase and the ability for registrants to renew names for up to ten years.

2. **Stewardship Council; Free Expression and Data Use.** Formation of a .ORG Stewardship Council comprised of independent members of the .ORG Community, with specific authority to veto proposed modifications to PIR's policies regarding freedom of expression and protection of customer information. The .ORG Stewardship Council also would have authority to veto any changes to the .ORG Stewardship Council charter that would diminish the .ORG Stewardship Council's rights with respect to policies in these two areas.

3. **Community Enablement Fund.** Establishing and funding a Community Enablement Fund under the direction of the .ORG Stewardship Council to help support the financing of initiatives undertaken in support of .ORG registrants.

4. **Annual Reporting.** Publishing an annual report assessing PIR's compliance with the PIC and the ways in which PIR pursued activities for the benefit of .ORG registrants during the preceding year.

Because these would be in a PIC that would become part of the .ORG Registry Agreement, the legally binding commitments outlined above would follow .ORG regardless of who operates .ORG or who owns PIR.

#### Advisory Council/.ORG Stewardship Council

PIR has maintained for years an Advisory Council (the "AC") to provide strategic advice in the policy arena to PIR in order to help focus on the needs of nonprofits and mission driven entities around the world. The AC has been important to the success of PIR over the years and PIR is tremendously appreciative of the AC's efforts. This is particularly true because the AC is a group of geographically diverse participants, who have participated in earnest in meetings at all hours of the night at their local time. Due to the limited charter remit of the AC and the highly sensitive nature of the Transaction, the AC was not consulted prior to entering into the purchase agreement. PIR has subsequently updated the AC on several occasions regarding the Transaction.

The .ORG Stewardship Council is intended to carry out the important mission of the AC, but with a broader scope and more direct authority and responsibility with respect to .ORG. The .ORG Stewardship Council will be established via: (a) a general commitment in the PIC; and (b) a council Charter describing in more detail principles and protocols for the administration and operation of the Council.

The .ORG Stewardship Council would have the following specific authorities:

- The .ORG Stewardship Council would have the power to veto changes to .ORG policies proposed by PIR in two areas:
  - (1) policies and procedures to provide appropriate limitations and safeguards against restriction of free expression in the .ORG domain name space, consistent with the values of the .ORG community; and
  - (2) appropriate limitations and safeguards regarding use or disclosure of registration data or other personal data of .ORG domain name registrants or users of .ORG domain names.
- PIR would reserve the right at all times to ensure compliance with applicable laws and regulations.
- The .ORG Stewardship Council also would have authority to veto any changes to the .ORG Stewardship Council charter that would diminish the .ORG Stewardship Council's rights with respect to policies in these two areas.
- The Council also would have the right to veto (a) proposed changes to the statement of vision and values of the .ORG Community Enablement Fund and (b) PIR's proposed allocation of appropriations from the .ORG Community Enablement Fund.

There would be seven members of the .ORG Stewardship Council. Five of the initial council members would be appointed by the PIR Board; the remaining two council members and all subsequent members may be nominated for appointment by each of the PIR Board and a Nominating Committee established by the .ORG Stewardship Council, and will be subject to approval by both the PIR Board and the .ORG Stewardship Council.

#### .ORG Community Outreach

PIR and Ethos just announced that they are running a Public Engagement regarding the PIC, the .ORG Stewardship Council and anchoring PIR in a Public Benefit LLC framework. Members of the .ORG Community are invited to provide their feedback and inputs in each of these key areas. Please see [www.keypointsabout.org](http://www.keypointsabout.org) for more information.

PIR, Ethos and ISOC have also engaged in extensive .ORG Community outreach. On March 3, Ethos and PIR conducted an online engagement session titled "The Legal Enforceability of Ethos' Public Interest Commitment (PIC)." Similarly, on February 27, Ethos and PIR conducted an online engagement session titled "The Future of .ORG" in conjunction with the release of the PIC, and PIR promoted the both events on multiple occasions via social media channels. Slides from those sessions are included as **Attachment 3**. PIR's CEO also provided an update to the At-Large Advisory Committee's Consolidated Policy Working Group (CPWG) on February 26. A copy of that recording is available here: <https://community.icann.org/display/atlarge/2020-02-26+Consolidated+Policy+Working+Group+Call>. PIR's CEO also spoke about the PIC and .ORG Stewardship Council with the ICANN Non-Commercial Stakeholder Group on March 4<sup>th</sup>. Previously, PIR and Ethos conducted a Community Webinar on December 19 to answer questions and address .ORG Community concerns. Erik Brooks of Ethos, Andrew Sullivan of the Internet Society ("ISOC") and Jon Nevett of PIR joined a community call organized by

NTEN and joined by the Electronic Frontier Foundation on December 5. A copy of that recording is available: <https://vimeo.com/377655043> and a transcript was posted at [KeyPointsAbout.org/Events](https://KeyPointsAbout.org/Events). Ethos and PIR have offered to conduct a session at ICANN 67 in person and are happy to participate remotely now that the meeting has shifted to a virtual meeting.

Additionally, PIR representatives have written a number of blogs and essays to the community addressing the sale. These include:

“[The Future of .ORG](#)” by PIR CEO Jon Nevett;

“[Reflecting on Community Recommendations to Improve .ORG](#)” by PIR Vice President of Policy Paul Diaz; and

“[.ORG Will Thrive Under Ethos Capital](#)” by Vice Chair of PIR Board of Directors Jeff Bedser.

Ethos has written several pieces as well. These include:

“[Strengthening .ORG for the Future](#)” and “[Firm Commitments to .ORG Community](#)” by Ethos CEO Erik Brooks;

“[What Makes Ethos Capital A Responsible Steward of PIR?](#)” by Ethos Chief Purpose Officer Nora Abusitta-Ouri (published in The NonProfit Times);

“[A Stronger PIR and .ORG: Standing Behind Our Commitments](#),” also by Nora Abusitta-Ouri;

and “[Explaining the Legal Enforceability of the PIC Proposed by Ethos for .ORG](#)” by Ethos legal advisor, Allen Grogan.

Pieces by The Internet Society include:

“[The Sale of PIR: The Internet Society Board Perspective](#)” by Chair of ISOC Board of Trustees Gonzalo Camarillo;

“[Answering Key Questions](#)” by ISOC CEO Andrew Sullivan;

“[Here’s How We Can Truly #SaveDotOrg](#)” by ISOC Trustee Mike Godwin; and

“[Why I voted to Sell .ORG](#)” by ISOC Trustee Richard Barnes.

Andrew Sullivan participated in a [forum at American University about the sale](#) on February 11 alongside Marc Rotenberg (Electronic Privacy Information Center), Mitch Stoltz (Electronic Frontier Foundation) and Benjamin Leff (Washington College of Law). The webcast for the session is available at: <https://youtu.be/NEDeQt-gJNQ>. ISOC Trustee Mike Godwin wrote a blog prior to the event entitled, “[Looking Forward to ‘The Conversation We Should Be Having.’](#)” And Andrew Sullivan wrote a follow up blog to the event entitled, “[The Sale of .ORG Registry: Continuing the Conversation We Should Be Having.](#)”

## Public Benefit LLC

Ethos still plans to pursue the Public Benefit LLC status previously announced. Given the comprehensive protections embodied in the PIC, the statement of public benefit now is expected to be broader. The Public Benefit LLC framework that we previously proposed raised concerns from some community members who expressed the belief that those commitments could be modified at any time. In response to those concerns, as well as calls from community members to ensure that our commitments are made in a way that is legally binding and enforceable, we have since proposed to make these commitments in the form of a Public Interest Commitment that will become part of Specification 11 to PIR’s Registry Agreement with ICANN. These

commitments will be legally enforceable both by ICANN and by members of the community pursuant to the PICDRP process, and will not be subject to unilateral modification by PIR. Again, however, we still will pursue anchoring PIR in a Public Benefit LLC, but with what is known as a general statement of public benefit, rather than the specific items now addressed by the PIC.

### **Proposed Ownership Structure and Individuals**

PIR already has disclosed, both directly to ICANN and through its public disclosure, the proposed ownership structure for this Transaction. However, we are happy to elaborate on the additional clarifying questions posed by ICANN.

ICANN has requested the identity of the equity investors in the transaction, including any with the right to appoint members to the PIR Board. No equity investor other than Ethos-controlled vehicles owns, or has the option to own, more than 50%. Please see **Exhibit A**, which provides a list of the equity investors and highlights those which hold greater than 15% equity interests and/or who have the right to appoint one or more members to the PIR Board. Because this information is the subject of non-disclosure agreements with minority investors, Exhibit A is disclosed in confidence to ICANN only. However, we point out that Ethos would control the investment in PIR. The minority investors listed in Exhibit A are all North American family or institutional investors.

Ethos has the right to appoint two of the voting members on the PIR Board. Erik Brooks will initially have two votes on the PIR Board. Ethos may allocate the two votes to Erik Brooks, which is a common practice, or it may appoint someone else to the PIR Board following the closing of the Transaction. For the avoidance of doubt, if Ethos fills its second allotted slot to the PIR Board, it will not be with Fadi Chehadé.

As previously stated in our response to questions in December, the Board for the subsidiaries of Purpose Domains Investments, LLC will be the same individuals and will have identical voting rules/rights as those of Purpose Domains Investments, LLC.

### **Transaction Documents and Information**

ISOC has informed PIR that there was no offer or communication from Ethos before September 2019, and PIR also did not receive any offer or communication from Ethos before that time. ISOC also has confirmed to PIR that “all funds to be received by CGF will be held for the purposes discussed in PIR’s earlier response and no such funds have been earmarked or intended to be distributed to enrich any individual or entity (other than fees and expenses of advisors to the transaction).” For the sake of transparency and as previously disclosed, we note that PIR has established a modest staff retention program that is separate from the funds received by Connected Giving Foundation (“CGF”) as part of this Transaction. This program was created as a retention tool during a time of turmoil and uncertainty for PIR staff while they assist with both the Transaction itself and the subsequent transition. This sort of plan is common in transactions such as this one and, as a best practice, the PIR Board had the plan reviewed and approved by an independent compensation firm. To be clear, none of the proceeds received by CGF will be paid to any individual at ISOC or PIR.

## PIR Financial Stability

Following the Transaction, PIR will have a conservative capital structure with debt equal to approximately 30% of total capitalization. For purposes of comparison, this debt level is comparable to the median of the S&P 500 and far below what is typical in the average private equity transaction.

PIR is a cash flow positive business that in recent years has consistently generated tens of millions of dollars in surplus revenue. Last year PIR contributed more than \$50M to ISOC. In future years, these contributions will no longer flow to ISOC, leaving PIR with significant financial resources not previously available to it. PIR would be obligated to pay back the credit facility (see below). Interest expense on PIR's new credit facility (detailed further below) for the first year post-Transaction will amount to \$20-25 million. As a result, post-Transaction PIR will have tens of millions of free cash flow to invest in .ORG's infrastructure, develop new products and services, finance initiatives such as the .ORG Community Enablement Fund, as well as cover any tax burden.<sup>2</sup> Further, while PIR no longer will be a 501(c)(3) organization post-Transaction, due to the structure of the Transaction, it will generate tax deductions and losses reducing any potential cash leakage. As this illustrates, PIR's financial situation following the Transaction will be highly stable and ISOC's funding will be substantially more diversified. Anyone who asserts otherwise is ignoring the simple math detailed here. Because PIR is a healthy, self-sustaining business that will have access to its revenue post-Transaction, there are no commitments to fund operations because such commitments are unnecessary.

## Equity Structure

The equity investment has a typical fund structure wherein investors will make cash contributions that are used to fund the purchase price. At the closing of the Transaction, the amount of equity financing (described above) plus the amount of debt financing (described below) will be sufficient to pay the purchase price owed to the seller and pay Transaction expenses. The seller, CGF (whose Sole Member is ISOC) will then be able to use the funds for its ongoing 501(c)(3) mission.

Following the closing of the Transaction, the Ethos investors will be eligible to receive capital distributions if any are made. The investment is structured with long-term capital with a 10+ year investment horizon so that Ethos and the PIR management team have adequate time to build

<sup>2</sup> After PIR's conversion to a limited liability company that is wholly-owned by the seller, CGF (whose sole member is ISOC), the Transaction will be treated for tax purposes as a taxable asset acquisition by the buyer of all of PIR's assets. When a taxpayer buys assets, the taxpayer is required to allocate the aggregate purchase price among those assets, including intangible assets and goodwill, based on their relative fair market values. U.S. tax law generally allows taxpayers to amortize the cost basis of acquired intangibles and goodwill on a straight line basis over 15 years. Those amortization deductions reduce taxable income. Based on the projections of PIR's taxable income, those amortization deductions will be greater than PIR's taxable income for the first few years following the acquisition. U.S. tax law generally permits, with certain limitations, taxpayers to carry forward tax losses (which are created generally to the extent that deductions exceed taxable income within a taxable period) to offset taxable income in later years. However, despite these early deductions pursuant to U.S. tax law, PIR is projected to allocate a very significant amount of taxable income to its beneficial owners over time.

better services and expand geographically. This will be done using approved annual budgets and following a strategic business plan for PIR.

Capital distributions from PIR are limited by state laws, by restrictions under the credit facility and by provisions in the organizational documents of Purpose Domains Investments, LLC. After payment of annual operating expenses, including payments to lenders, it is intended that significant additional amounts will remain and be available for reinvestment back in PIR. PIR and its direct and indirect parents are under no obligation to return capital to investors during the investment period.

ICANN requested that PIR provide the LLC Agreement for each entity. These agreements are subject to non-disclosure obligations; some are not final and still the subject of ongoing negotiations; and disclosure of these agreements is not warranted.

Credit Facility Information

A summary of the terms of the credit facility follows:

Credit parties: Purpose Domains Direct, LLC (“**Borrower**”); Purpose Domains Holdings, LLC (guarantor and direct parent of Borrower); Public Interest Registry LLC (guarantor and direct subsidiary of Borrower). Note that guarantors are jointly and severally liable for all amounts owed under the \$360M credit facility.

Security: first priority lien on all assets of the credit parties, including equity of Borrower and Public Interest Registry LLC, subject to certain exclusions.

Maturity: 5.5 years after the Transaction closes

Principal amount and payment schedule: \$10 million revolving credit facility (undrawn at closing) and \$360 million term loan facility.

Interest rate: as follows

	ABR+	LIBOR+
Term loan	4.00%	5.00% (LIBOR floor 1.00%)
Revolving credit	3.00%	4.00% (LIBOR floor 0.00%)

Because PIR will be profitable from a cash perspective as described above, PIR will be fully capable of servicing the financial obligations (including the repayment obligations under the credit facility).



## Ethos Exit Strategy

Ethos does not have a defined exit strategy for its investment in PIR. Ethos intends to remain an investor in PIR for years to come. If Ethos considers an exit, the Stewardship Council would remain in place, because the PIC would remain binding upon any successor. This is one of the reasons Ethos has committed to the .ORG Stewardship Council in the PIC as those requirements will follow .ORG regardless of who the Registry Operator is or who owns PIR. Any exit strategy would take into account all relevant conditions at the time, including factors such as PIR's financial performance, growth potential and competitive market conditions. It is not possible to predict what an exit might look like years down the line.

## **Financial Questions**

Both Ethos and PIR fully expect PIR (and .ORG) to remain in an excellent financial position after the Transaction. The conversion of PIR to a limited liability company is expected to be treated as a reorganization for U.S. federal income tax purposes, in which PIR's sole member, a Pennsylvania non-profit corporation, will be treated as owning all of the assets and liabilities of PIR, and PIR will be treated as a disregarded entity for U.S. federal income tax purposes. As a disregarded entity, PIR will have the same character for U.S. federal income tax purposes as its sole member, which will be CGF at the time of conversion. There should not be any financial implications as a result of this conversion.

To the extent ICANN is seeking Ethos's detailed financial projections for PIR for ten years, any such projections would necessarily be highly speculative and of extremely limited value. Based on PIR's seventeen-year history and the financials involved in this Transaction, PIR will remain a healthy, cash flow-positive business for the indefinite foreseeable future and no additional infusion of capital would be required to operate PIR successfully.

## **Documents/Filings with the Pennsylvania Authorities**

We previously provided our letter to the Pennsylvania Attorney General's office to ICANN. We have not yet begun the Pennsylvania Orphans' Court approval process; when that process begins, the filings made there are accessible by the public. To effectuate the conversion, a Statement of Conversion will be filed with the Pennsylvania Department of State. That filing will also be accessible by the public.

## **Summary**

PIR and Ethos have provided significantly more information than what is required by ICANN's processes. We look forward to ICANN's final decision to consent or withhold its consent to this Transaction on or before March 20, 2020.

# **ATTACHMENT 1**

## SPECIFICATION 11

### PUBLIC INTEREST COMMITMENTS

The following provisions are proposed to be added to the .ORG Registry Agreement in a new Section 4 of Specification 11.

4. Registry Operator agrees to perform the following specific public interest commitments, which commitments shall be enforceable by ICANN and through the PICDRP. Registry Operator shall comply with the PICDRP. Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Agreement) following a determination by any PICDRP panel and to be bound by any such determination. Nothing in Section 4 of this Specification shall limit any obligations of Registry Operator under this Specification. In the event Section 4 of this Specification conflicts with the requirements of any other provision of the Registry Agreement (including any Section of this Specification), such other provision shall govern.
  - i. **Affordability.** As of the Effective Date (June 30, 2019), the price Registry Operator charges to ICANN-accredited registrars for .ORG initial domain name registrations or renewal(s) of domain name registrations is US\$9.93 (the "Service Fee"). At all times during the period ending eight (8) years following the Effective Date, the maximum allowable Service Fee (the "Applicable Maximum Fee") that Registry Operator may charge to registrars for .ORG initial domain name registrations or renewal(s) of domain name registrations shall be calculated in United States dollars rounded to the nearest cent according to the following formula:

$$\text{Applicable Maximum Fee} = \$9.93 \times (1.10^n)$$

Where n is equal to the whole number of years elapsed since the Effective Date (by way of example, at December 31, 2019, n = 0; at June 30, 2020, n = 1; at June 30, 2021, n = 2).

To provide a worked example calculation, as of June 30, 2021, the Applicable Maximum Fee shall be calculated as:

$$\$9.93 \times (1.10^2) = \$12.02$$

- ii. **.ORG Stewardship Council.**
  - a. Registry Operator will maintain a body to provide strategic advice and oversight regarding certain key policies and functions of Registry Operator affecting .ORG and its community (the ".ORG Stewardship Council"). No employee, director or member of Registry Operator shall serve on the .ORG

Stewardship Council. The .ORG Stewardship Council will have authority to provide independent advice on and a binding right to veto modifications proposed by Registry Operator to Registry Operator's 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"), in each case in accordance with the .ORG Stewardship Council charter (the "Charter"). Notwithstanding the foregoing, Registry Operator reserves the right at all times to ensure compliance in its sole judgment with applicable laws, policies and regulations.

- b. The initial Charter has been established by Registry Operator's board of managers. Any proposed amendment to the Charter that diminishes the .ORG Stewardship Council's right to provide advice on and veto modifications to the Designated Policies shall be submitted to a vote by the .ORG Stewardship Council, and, if such proposed amendment is rejected by a vote of two thirds or more of all members of the .ORG Stewardship Council, Registry Operator will not implement such amendment.
- iii. **Community Enablement Fund.** Within 90-days following the date this version of the Specification is appended to the Registry Agreement and becomes effective, Registry Operator will establish a "Community Enablement Fund" to provide support for initiatives benefitting .ORG registrants and approved by the .ORG Stewardship Council. The commission, charter, and funding of the Community Enablement Fund will be established by Registry Operator's board of managers with input from the .ORG Stewardship Council. The .ORG Stewardship Council will be responsible for providing recommendations and advice regarding the Community Enablement Fund. Appropriations from the .ORG Community Enablement Fund will be subject to approval of the PIR Board.
- iv. **Annual Public Report.** Registry Operator will produce and publish annually a report that assesses Registry Operator's compliance with Section 4 of these Public Interest Commitments and the ways in which Registry Operator pursued activities for the benefit of the registrants of .ORG domain names during the preceding year.

# **ATTACHMENT 2**

## **.ORG Stewardship Council Charter**

**[•], 2020**

The following principles and protocols will govern the administration and operation of the .ORG Stewardship Council (the “.ORG Stewardship Council”), a body established by the Board of Managers (the “PIR Board”) of Public Interest Registry, LLC (“PIR”) to provide strategic advice and oversight regarding key policies and functions of PIR affecting the .ORG community.

### **I. .ORG Stewardship Council Duties and Responsibilities**

The .ORG Stewardship Council will have such duties and responsibilities as the PIR Board may assign from time to time, and as such duties and responsibilities may be modified by the PIR Board from time to time, but in any event including those specified below. The .ORG Stewardship Council will at all times act, and make its recommendations in accordance with, all applicable law.

#### **Responsibility 1: Advice and Recommendations Regarding Freedom of Expression**

The PIR Board will from time to time seek advice and recommendations from the .ORG Stewardship Council regarding any changes to PIR policies proposed by the PIR Board concerning appropriate limitations and safeguards regarding censorship of free expression in the .ORG domain name space, consistent with the values of the .ORG community and with PIR’s Anti-Abuse Policy. The .ORG Stewardship Council will have dispositive veto authority over any such changes as set forth in Principle 12 below.

#### **Responsibility 2: Advice and Recommendations Regarding Use of Data**

The PIR Board will from time to time seek advice and recommendations from the .ORG Stewardship Council regarding any changes to PIR policies proposed by the PIR Board concerning appropriate limitations and safeguards regarding use or disclosure of registration data or other personal data of .ORG domain name registrants and users, consistent with the values of the .ORG community and with PIR’s Anti-Abuse Policy. The .ORG Stewardship Council will have dispositive veto authority over any such changes as set forth in Principle 12 below.

#### **Responsibility 3: Strategic Advice Regarding Other PIR Policies**

The .ORG Stewardship Council will provide the PIR Board or its designee, upon request of the PIR Board, with independent strategic advice and recommendations to help guide PIR in considering and balancing the best interests of all .ORG stakeholders, including customers, employees, vendors, the Internet community, the public and PIR investors, in order to help the PIR Board assess how it can promote values that serve the mission-driven goals of the .ORG community. This may include independent advice and recommendations regarding services and programs to be provided by PIR to serve and promote the .ORG community. This will not, however, include advice or recommendations regarding day-to-day operational matters, financial or budgeting matters, or pricing of PIR services.

#### **Responsibility 4: .ORG Community Enablement Fund Advice**

The .ORG Stewardship Council will provide recommendations and advice regarding a .ORG Community Enablement Fund established by PIR to provide support for initiatives benefitting .ORG registrants that are consistent with the mission and values of the .ORG community. The .ORG Stewardship Council will review (i) from time to time, any changes to the statement of vision and values of the .ORG Community Enablement Fund (the “Fund Value Statement”) that are proposed by the PIR Board, and (ii) at least once annually, PIR’s proposed allocation of appropriations from the .ORG Community Enablement Fund (“Proposed Fund Appropriations”)

### **II. .ORG Stewardship Council Policies and Procedures**

#### **Principle 1**

The .ORG Stewardship Council will seek advice and input from members of the .ORG registrant community regarding key policies and functions of PIR affecting the .ORG community.

#### **Principle 2**

The .ORG Stewardship Council shall provide independent advice to the PIR Board, undertaking such analysis as the .ORG Stewardship Council sees fit and considering such factors as the .ORG Stewardship Council determines appropriate.

The .ORG Stewardship Council shall not, however, have legal authority to act for PIR or the PIR Board, except that the .ORG Stewardship Council will act for PIR with respect to the .ORG Community Enablement Fund as specified herein and in accordance with the .ORG Community Enablement Fund’s governing documents.

#### **Principle 3**

The .ORG Stewardship Council shall report its findings and recommendations in a timely manner to the PIR Board through the Chair (as defined below), or in the absence or incapacity of the Chair, through the Vice-Chair (as defined below).

#### **Principle 4**

The .ORG Stewardship Council shall consist of seven (7) voting members (collectively, “Members”, and each a “Member”), including the Chair.

Members will be selected from among authorities knowledgeable in the fields of mission-driven, charitable and non-profit organization management, social entrepreneurship, community development, economic empowerment, social advocacy, human rights, philanthropy and related subjects of concern to the .ORG community. Five (5) of the inaugural Members shall be selected and appointed by the PIR Board or its designee. The remaining two (2) inaugural Members, and all subsequent Members, including in the case of vacancies due to resignation, may be nominated for appointment by each of the PIR Board and a Nominating Committee established by the .ORG

Stewardship Council, and will be subject to approval by both the PIR Board and the .ORG Stewardship Council.

Members will serve for staggered overlapping terms of three years; provided, that each of the inaugural Members will serve a term of either one, two, or three years as determined by the PIR Board.

Members also may resign at any time by written notice to each of the .ORG Stewardship Council and the PIR Board.

### **Principle 5**

The .ORG Stewardship Council will have a Chairperson (the “Chair”), a Vice Chairperson (the “Vice-Chair”) and a Recording Secretary, each of whom will be elected for one-year terms by simple majority vote of Members. Elections will be held at the first meeting of the new membership year. The .ORG Stewardship Council may designate additional officers as it deems necessary or appropriate.

The Chair may call for the creation of Committees and Working Groups to address any matter within the functions and responsibilities of the .ORG Stewardship Council.

If the Chair is absent from any meeting or part thereof, the Vice-Chair shall perform the functions of the Chair; provided, that, if the Vice-Chair also is absent, the .ORG Stewardship Council shall elect an interim Chair for that meeting or that part of the meeting.

If the Chair can no longer perform the functions of the office, the .ORG Stewardship Council shall designate the Vice-Chair to perform those functions pending election of a new Chair; provided, that if the Vice-Chair also is incapacitated or the position is vacant, the .ORG Stewardship Council shall elect an interim Chair to perform those functions pending the election of a new Chair.

### **Principle 6**

The .ORG Stewardship Council shall meet at least twice annually in person on such dates and at such locations as are determined by the Chair and notified to Members in accordance with Principle 6 below.

In addition to the designated semi-annual meeting, the .ORG Stewardship Council may meet additionally as often as Members deem appropriate. Additional .ORG Stewardship Council meetings may be convened (i) in the discretion of the Chair, at the request of any Member or (ii) at the request of the PIR Board.

### **Principle 7**

Meetings of the .ORG Stewardship Council shall be convened by the Chair, or in the case of vacancy or incapacity of the Chair, the Vice-Chair, by written notice (including, without limitation, notice by email) issued (i) in the case of in person meetings, not less than twenty-eight (28)



calendar days prior to the meeting date, (ii) in the case of electronic meetings, not less than ten (10) calendar days prior to the meeting date or (iii) in the case of emergency (as determined by the Chair or the other Member calling such meeting), not less than five (5) calendar days prior to the meeting date, unless, in each case, such notice period is waived by all Members. Attendance at a .ORG Stewardship Council meeting without objection prior to the start of such meeting shall be deemed waiver of notice requirements.

Telephonic attendance shall be deemed to constitute attendance in person.

### **Principle 8**

Online and electronic meetings of the .ORG Stewardship Council may be conducted via any secure communications, including email, web-based communications and teleconference platforms that can be accessed by all Members.

### **Principle 9**

A proposed agenda for each .ORG Stewardship Council meeting shall be communicated to Members prior to the meeting.

Requests for items to be included in the agenda of a forthcoming meeting shall be communicated by any Member and/or the PIR Board to the Chair in writing, which may include by email.

### **Principle 10**

There shall be no attendance or voting by proxy. Members may only be represented at .ORG Stewardship Council meetings, whether in person or electronic, by Members themselves and not by designated representatives.

### **Principle 11**

A quorum of the .ORG Stewardship Council shall consist of a simple majority of Members. A quorum shall only be necessary for any meeting at which a decision or decisions must be made.

### **Principle 12**

With respect to any proposed change to PIR policy described in Responsibility 1 and/or Responsibility 2 above (a “Designated Policy Change”), if two-thirds or more of all Members vote against such proposed Designated Policy Change, PIR will refrain from implementing such proposed Designated Policy Change. Additionally, any proposed amendment to this .ORG Stewardship Council Charter that would diminish the .ORG Stewardship Council’s right to provide advice on and approve a Designated Policy Change also shall be submitted to a vote by the .ORG Stewardship Council, and, if such proposed amendment is rejected by a vote of two-thirds or more of all Members, PIR will refrain from implementing such amendment. Notwithstanding the foregoing, PIR and the PIR Board reserve the right at all times in their sole judgment to take actions

consistent with PIR’s Anti-Abuse Policy and to ensure compliance with applicable laws, policies and regulations.

With respect to any proposed change to the Fund Value Statement described in Responsibility 4 above (“Fund Value Statement Change”), if two-thirds or more of all Members vote against such proposed Fund Value Statement Change, PIR will refrain from implementing such proposed Fund Value Statement Change.

With respect to Proposed Fund Appropriations described in Responsibility 4 above, if two-thirds or more of all Members vote against such Proposed Fund Appropriations, the PIR Board will revise and resubmit Proposed Fund Appropriations to the .ORG Stewardship Council for another vote by the Members.

With respect to all other matters, the .ORG Stewardship Council will work on the basis of seeking consensus among its membership. Consistent with United Nations practice<sup>1</sup>, consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection. Where consensus is not possible, the Chair shall convey the full range of views expressed by Members to the PIR Board.

### **Principle 13**

Minutes of all meetings of .ORG Stewardship Council shall be maintained in PIR’s corporate books and records. All decisions and recommendations of the .ORG Stewardship Council that are communicated to the PIR Board shall be made public.

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<sup>1</sup> In United Nations practice, the concept of “consensus” is understood to mean the practice of adoption of resolutions or decisions by general agreement without resort to voting in the absence of any formal objection that would stand in the way of a decision being declared adopted in that manner. Thus, in the event that consensus or general agreement is achieved, the resolutions and decisions of the United Nations meetings and conferences have been adopted without a vote. In this connection, it should be noted that the expressions “without a vote”, “by consensus” and “by general agreement” are, in the practice of the United Nations, synonymous and therefore interchangeable.

# **ATTACHMENT 3**



Tuesday, March 3, 2020

15:00 - 15:30 EST/ 20:00 - 20:30 UTC

## ***.ORG COMMUNITY ENGAGEMENT***

***THE LEGAL ENFORCEABILITY OF THE  
PUBLIC INTEREST COMMITMENT***



# AGENDA



- *Welcome and Introductions*
- *Overview and Explanation of the Public Interest Commitment (PIC)*
- *Participant Q&A*





## DEFINITION OF A PIC



*A Public Interest Commitment (PIC) is embodied in Specification 11 of ICANN's new gTLD Registry Agreement and thus is part of the contract between ICANN and a Registry Operator.*

*Broadly speaking, there are two categories of contractually-binding PICs.*

- Some PICs are mandatory and are listed in Specification 11 of every base gTLD Registry Agreement.*
- The second form of PIC is sometimes referred to as a "voluntary PIC" because it is entered into voluntarily by an individual Registry, rather than mandated or negotiated by ICANN. The PIC proposed by Ethos and PIR fits into this second, voluntary category.*

*Once a PIC made voluntarily is incorporated into the Registry Agreement, then it, just like other portions of the Registry Agreement, cannot be subject to unilateral modification or revocation by PIR.*

*Any change or amendment to a PIC would be subject to the amendment procedures established in the Registry Agreement, which would include a public comment period and Board approval.*





# OVERVIEW OF PUBLIC INTEREST COMMITMENT (PIC)





## **PIC COMMITMENTS ON PRICE**



### ***Affordability of .ORG Domain Names***

*Fees charged to registrars for initial or renewal registration of a .ORG domain name will not increase by more than 10% per year on average for eight years from the start of the current Registry Agreement, under a precise formula that does not permit front-loading of those price increases.*

*Through this commitment, .ORG will become one of the only TLDs to have a price restriction and it will remain one of the most affordable domains in the world.*

*There is no requirement to increase .ORG prices up to the maximum price. In fact, .ORG pricing is constrained by the competitive market of registrars and registrants, and the growing market for many other new domains such as .foundation and .charity*

**≤10%  
AVG**







# OVERVIEW OF PUBLIC INTEREST COMMITMENT (PIC)





# **PIC COMMITMENTS ON STEWARDSHIP COUNCIL**

## ***.ORG Stewardship Council***

*The Stewardship Council will have authority to provide independent advice — and a binding right to veto modifications proposed by PIR to PIR’s policies regarding:*

- 1. Anti-abuse measures and freedom of expression*
- 2. Use of .ORG registrant and user data.*

*The Council will have specific authority to veto any proposals or modifications that would limit the Council’s oversight in these areas. No employee, director or member of PIR shall serve on the Council.*





# PIC COMMITMENTS ON COMMUNITY ENABLEMENT FUND

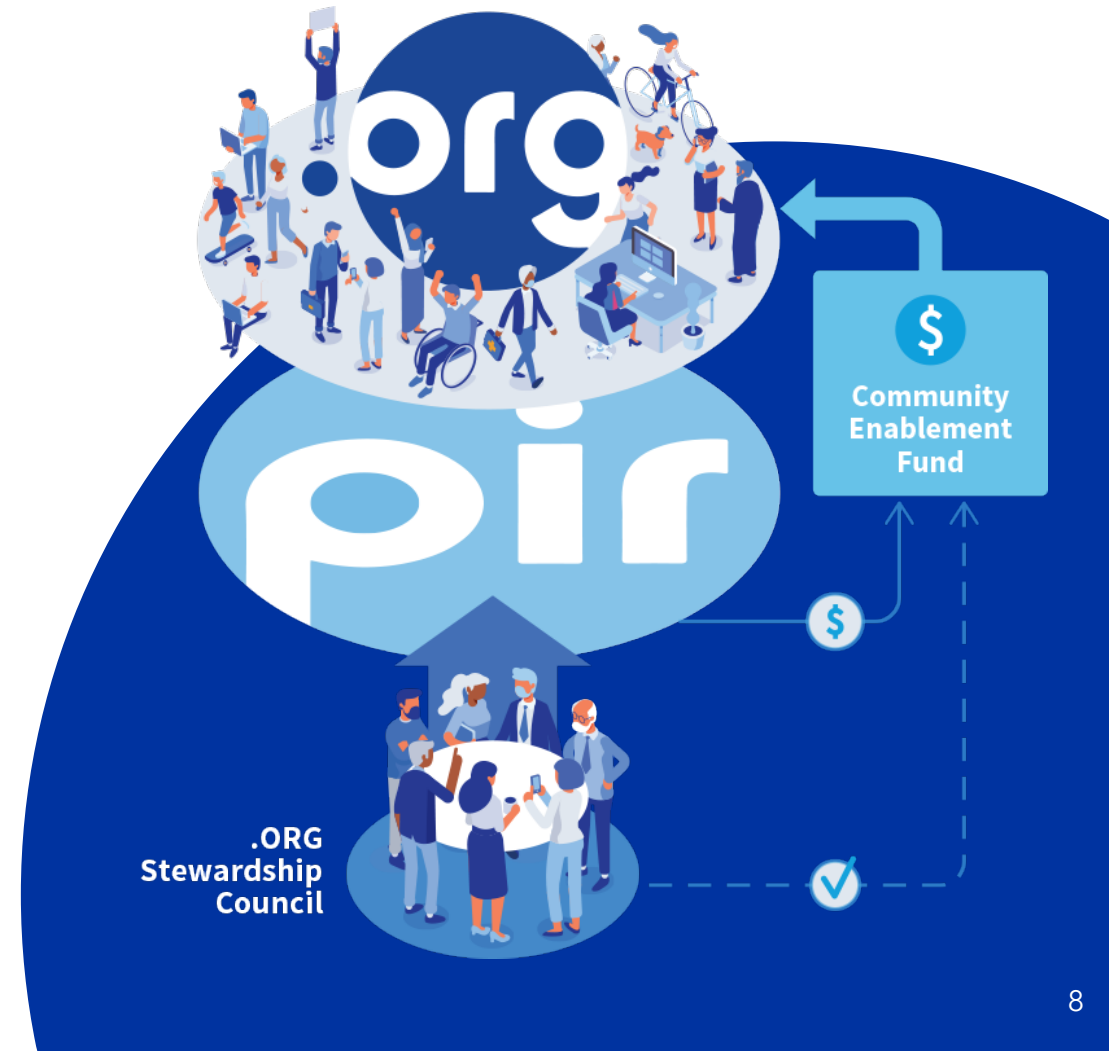
## Community Enablement Fund

*The Community Enablement Fund will provide support for initiatives benefitting .ORG registrants and approved by the Council.*

*The commission, charter, and funding of the Fund will be established by PIR's Board with input from the Council.*

*The Council will be responsible for providing recommendations and advice regarding the Fund. Appropriations from the Fund will be subject to approval of the PIR Board.*

*It is anticipated that PIR will contribute \$10 million to the Fund over the remaining life of the current Registry Agreement.*





# PIC COMMITMENTS ON ANNUAL REPORT



## *Annual Report*

*PIR will produce and publish annually a report that assesses PIR's compliance with the PIC commitments and the ways in which PIR pursued activities for the benefit of the registrants of .ORG domain names during the preceding year.*





# Q&A



***THANK  
YOU***



Thursday, February 27, 2020

15:00 - 16:00 EST/ 20:00 - 21:00 UTC

# ***THE FUTURE OF .ORG: COMMUNITY ENGAGEMENT***



# AGENDA



- *Welcome and Introductions*
- *Overview of Accountability Initiatives*
- *Explanation of the Public Interest Commitment (PIC)*
- *Addressing Key Questions*
- *Participant Q&A*







# OVERVIEW OF ACCOUNTABILITY INITIATIVES





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## **PIC COMMITMENTS ON PRICE**



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## ***Annual Report***

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# *ADDRESSING KEY QUESTIONS*

# PRICING COMMITMENTS



- *Question 1: Will Ethos impose egregious price increases that will be too expensive for non-profits?*
- *Question 2: Why is the commitment to maintaining prices for 8 years?*
- ✓ *RESOLUTION:*
- ✓ *Legally-binding commitment to limit maximum price increase for .ORG to **no more than** 10% per year on average.*
- ✓ *8 year review seems reasonable as .COM will be reviewed in 4 years and .NET will be reviewed in 3 years.*
- ✓ *.ORG pricing will always be constrained by a highly competitive market, including competition with .COM, .NET, .FOUNDATION and .CHARITY.*
- ✓ *And there is extra protection in that a registrant can renew for up to 10 years if there is any increase.*



# ACCOUNTABILITY TO AND INVESTMENT IN THE .ORG COMMUNITY



- *Question 1: How can a PE firm retain the unique character of .ORG as a home for mission-driven organizations?*
  - *Question 2: What can Ethos do for the .ORG community that PIR hasn't been able to do under the Internet Society's ownership?*
- 
- ✓ **RESOLUTION:**
  - ✓ *Commitment in PIC to establish an independent Stewardship Council and Community Enablement Fund to support the .ORG community.*
  - ✓ *Ethos will dramatically increase the investment in .ORG and its community.*

# **.ORG CONTINUING TO OPERATE AS THE EXEMPLARY REGISTRY**



- Question 1: Under Ethos, what will prevent PIR from selling registrant data and breaking privacy laws?
- Question 2: Under Ethos, will PIR regulate content?
- ✓ RESOLUTION:
- ✓ *PIR's management team will remain in place to continue operating .ORG in the same, responsible manner under Ethos.*
- ✓ *The Stewardship Council will be able to veto modifications to PIR's anti-abuse measures and freedom of expression and the use of .ORG registrant and user data.*
- ✓ *Unauthorized sale of registrant data would constitute a breach of PIR's Registry Agreement with ICANN and a violation of various privacy laws around the world, exposing PIR to possible termination of the .ORG Registry Agreement, legal action by government regulators, and private claims by individuals.*



# Q&A



***THANK  
YOU***