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Approved Board Resolutions | Special Meeting of the ICANN Board

30 Apr 2020

1. Main Agenda:
   a. Public Interest Registry (PIR) Change of Control
      Rationale for Resolutions 2020.04.30.01 – 2020.04.30.02

1. Main Agenda:

After one Board member recused themself from participation in voting out of an abundance of caution and in compliance with ICANN's Conflicts of Interest Policy, the ICANN Board took the following action:

a. Public Interest Registry (PIR) Change of Control

Whereas, Public Interest Registry (PIR) is currently a non-profit organization incorporated in the State of Pennsylvania, and serves as the registry operator for seven top-level domains: .ORG; .ONG; .NGO; .xn--c1avg (Cyrillic script); .xn--i1b6bla6a2e (Devanagari script); .xn--nqv7f (Chinese 2-character script); and .xn--nqv7fs00ema (Chinese 4-character script). PIR has a registry agreement with ICANN for each of these seven TLDs (PIR's Registry Agreements).

Whereas, on 13 November 2019, PIR announced that the Internet Society (ISOC), PIR's parent organization, had reached an agreement with Ethos Capital, under which Ethos Capital or its affiliated entities (collectively, Ethos Capital) will ultimately acquire PIR and all of its assets from ISOC. On 14 November 2019, PIR formally notified ICANN of a change of control in advance of closing the proposed transaction.

Whereas, Section 7.5 of PIR's Registry Agreements with ICANN require that PIR seek ICANN's written approval for the change of control, and that ICANN must not unreasonably withhold that approval. Section 7.5 of PIR's Registry Agreements also gives ICANN the right to request additional information from PIR regarding the proposed transaction.

Whereas, ICANN and PIR have mutually agreed to five extensions of time within which ICANN must respond to the PIR change of control notification. ICANN is obligated to provide PIR a response by 4 May 2020.

Whereas, following ICANN's receipt of formal notice of PIR's Change of Control Request, at the direction of the ICANN Board, ICANN org has conducted extensive due diligence on the proposed transaction in order to understand whether it would be reasonable under PIR's Registry Agreements for ICANN to either approve or withhold consent to the proposed change of control. ICANN org has on three occasions requested additional information from PIR (on 9 December 2019, 19 February 2020, and 3 April 2020) and in each instance PIR provided written responses to ICANN org. Each of ICANN org's requests is publicly available. PIR's responses have also been made publicly available to the extent that PIR has consented to such public disclosure. The ICANN Board has access to all non-public information provided by PIR to ICANN org.

Whereas, in response to ICANN org's final set of questions, PIR provided ICANN with an updated draft of proposed Public Interest Commitments (PICs) for the .ORG Registry to try to address some of the key commitments being made to the .ORG community and other interested parties. This updated draft PIC was made available on icann.org for public consideration. After consideration of additional input on the PICs, PIR identified that it would be willing to make further modifications in order to support ICANN's enforcement powers and clarify the role of the proposed "Stewardship Council".

Whereas, in January 2020, the Office of the Attorney General of the State of California (CA-AGO) requested information from ICANN regarding the proposed transfer of PIR from ISOC to Ethos Capital in order to "analyze the impact to the nonprofit community including ICANN." ICANN is a California not-for-profit public benefit corporation, and the CA-AGO is responsible for supervising not-for-profit organizations in California.

Whereas, on 15 April 2020, ICANN received a letter from the CA-AGO "urg[ing] ICANN to reject the transfer of control over the .ORG Registry" and advising ICANN that "ICANN must exercise its authority to withhold approval." The CA-AGO cited numerous factors, including the size of the .ORG registry, the unique nature of the .ORG registry, the CA-AGO's conclusion that many questions remain unanswered by PIR, and the unknown nature of Ethos Capital, its range of proposed subsidiaries and its investors, a lack of transparency regarding Ethos Capital's future plans, and the financial impact of a US$360 million loan necessary to complete the transaction. The CA-AGO also questioned the financial viability and potential for failure of the .ORG registry in the future. The CA-AGO provided his reasoning for how these factors supported its assessment and how the CA-AGO considered this in light of its understanding of ICANN's Articles of Incorporation and Bylaws. The CA-AGO declared California's public interest in the .ORG registry running as a home for noncommercial entities, and that this public interest would be better served by withholding approval of the change of control. The CA-AGO declared that he would take "whatever action necessary to protect . . . the nonprofit community."

Whereas, the ICANN Board has been active in its oversight of ICANN org's evaluation of PIR's Change of Control Request. The Board has: received regular updates on ICANN org's review of the request as well as the status of the CA-AGO's investigation of ICANN; overseen ICANN org in its continued engagement with PIR to obtain additional information; had all of PIR's responses (non-public and public) made available for review; received a petition from protesters outside of ICANN's Los Angeles offices during the Board's January 2020 Board workshop; engaged with the ISOC Board of Directors for information from ISOC's perspective; convened a public forum in March 2020 during ICANN67 to hear the ICANN community's concerns; and considered the PICs that PIR proposes for inclusion in the .ORG Registry Agreement and requested ICANN org to make a public notice over the same. The Board has received approximately 30 briefings from ICANN org on this issue, representing over 30 hours of scheduled meetings. Each Board member also devoted substantial time to prepare for these briefings. The collective Board hours devoted in preparation for this decision count at least a thousand hours.

Resolved (2020.04.30.01), the ICANN Board directs ICANN's President and CEO to withhold ICANN's consent to PIR's Change of Control Request pursuant to Section 7.5 of PIR's Registry Agreements, thereby rejecting PIR's request. The Board finds the withholding of consent is reasonable in light of the balancing of all of the circumstances addressed or discussed by the Board.

Resolved (2020.04.30.02), the above decision is without prejudice to PIR to submit a new notice of indirect change of control and entity conversion for consideration if PIR successfully achieves an entity conversion approval in Pennsylvania through the Pennsylvania Court, which the ICANN Board and org will consider when evaluating any new notice.

Rationale for Resolutions 2020.04.30.01 – 2020.04.30.02

The Board's action in withholding consent for the change of control of Public Interest Registry (PIR) pursuant to the terms of PIR's Registry Agreements is both reasonable and in the public interest. The Board was presented with a unique and complex situation – a request to approve a fundamental change of control over one of the longest-standing and largest registries, that also includes a change in corporate form from a viable not-for-profit entity to a for-profit entity with a US$360 million debt obligation, and with new and untested community engagement mechanisms relying largely upon ICANN contractual compliance enforcement to hold the new entity accountable to the .ORG community. ICANN is being asked to agree to contract with a wholly different form of entity; instead of contracting with the mission-based not-for-profit that has responsibly operated the .ORG registry for nearly 20 years, with the protections for its own community embedded in its mission and status as a not-for-profit entity. If ICANN were to consent, ICANN would have to trust that the new proposed for-profit entity that no longer has the embedded protections that come from not-for-profit status, which has fiduciary obligations to its new investors and is obligated to service and repay US$360 million in debt, would serve the same benefits to the .ORG community.

While PIR's current parent entity, the Internet Society (ISOC), would obtain a US$1 billion endowment to secure its future through the proposed transaction, that is not within the scope of ICANN's consideration. The valuation of PIR is notable; in 2002, ISOC was awarded the ability to operate the .ORG registry through a purpose-built non-profit developed to support the unique nature of the .ORG community. PIR's responsible operation of the .ORG registry since that time created this US$1 billion value – value that ISOC is looking to realize through engaging in a transaction that will result in the conversion of PIR into a profit-making entity. The ICANN Board has considered the reasonableness of consent to the change of control as it relates to the new form of entity ICANN is asked to contract with for the registry agreements themselves, including in light of ICANN's mission to support and enhance the security, stability and resiliency of the Internet's unique identifiers. The ICANN Board understands that while technically ICANN will still hold a contract with PIR, the changes in the form of that entity are of meaningful significance to the Board's consideration of the Change of Control Request. On the whole, the ICANN Board determines that the public interest is better served in withholding consent as a result of various factors that create unacceptable uncertainty over the future of the third largest gTLD registry.

The ICANN Board's action should not be read to provide any commentary on the propriety of for-profit entities operating gTLD registries, nor as any prohibition or judgment on the role of private equity firms controlling registry operators. The considerations in front of the Board here are specific to this transaction, particularly in light of the long-standing history of the .ORG registry.

Background

Created in 1985, .ORG is one of the original TLDs in the Domain Name System (DNS). In 2002, through a competitive bidding process conducted by ICANN, ICANN selected a proposal submitted by ISOC to establish a wholly owned subsidiary, PIR, to serve as the .ORG registry operator, which PIR has been since 2003. ISOC is the sole member of PIR. Prior to 2003, .ORG was operated by VeriSign, Inc (previously Network Solutions, Inc.), the registry operator of the .COM and .NET gTLDs. PIR is the registry operator for seven gTLDs in total. In addition to .ORG, it operates .ONG; .NGO; .xn--c1avg (Cyrillic script); .xn--i1b6bla6a2e (Devanagari script); .xn--nqv7f (Chinese 2-character script); and .xn--nqv7fs00ema (Chinese 4-character script). Since its establishment, PIR has operated as a non-profit organization, incorporated in the State of Pennsylvania.

In winning the bid to operate .ORG, ISOC purpose-built the not-for-profit entity, PIR, to serve the needs of the .ORG registry and the noncommercial community. PIR represents its mission as "for the benefit of [its] end user consumers and the Internet as a whole". Under U.S. tax regulations, PIR was established as a "Supporting Organization" to ISOC, which has obligated PIR to act in support of ISOC as well as ISOC's mission. PIR contributes a portion of its revenue every year to ISOC; for 2018, the most recent year reported, PIR provided over US$48 million to ISOC while also serving PIR's mission through "improv[ing] the stability and security of the .ORG registry and deliver[ing] a robust Education and Outreach program that enlightens non-profits and NGOs". PIR holds itself out as "entrusted by millions to operate in the public interest" and "refus[ing] to compromise [its] ethical standards for the sake of expediency, popularity or profitability." This is the entity that has responsibly served as the registry operator and steward for the .ORG (and other) registries since 2002. PIR's Registry Agreements are between ICANN and PIR. PIR's most recent U.S. tax filing for 2018 report nearly US$95 million in revenue, with nearly US$50 million of that revenue distributed as grants in service of PIR's mission.

Timeline of events

On 13 November 2019, PIR announced that ISOC, its parent organization, had reached an agreement with Ethos Capital, under which Ethos Capital will acquire PIR and all of its assets from ISOC. The proposed transaction would result in PIR converting from a Pennsylvania non-profit corporation to a for-profit Pennsylvania limited liability company and Ethos Capital acquiring 100% ownership of PIR from the Internet Society (ISOC). Ethos Capital envisions a "new" PIR, which would convert from its historical not-for-profit status to a for-profit entity controlled by a private capital firm. Through the proposed transaction, ISOC – with which ICANN does not have a contract for any of the registries that PIR operates – would receive US$1 billion as an endowment for its future. Upon completion of the transaction, PIR would no longer have the obligation to provide support to ISOC or serve any other charitable purpose, but instead would be subject to a US$360 million debt obligation to service in support of the Ethos/PIR transaction. PIR would convert into a new for-profit entity (if authorized by the relevant regulatory authorities) that would be responsible for contracting with ICANN for the operation of the PIR registries. The current iteration of the not-for-profit PIR would no longer exist.

On 14 November 2019, PIR formally submitted to ICANN a "Notice of Indirect Change of Control and Entity Conversion" (Change of Control Request) in advance of closing the proposed transaction between Ethos Capital and ISOC. After review of the information provided by PIR in the 14 November submission, ICANN requested additional information from PIR on 9 December 2019. Additionally, on 9 December 2019, John Jeffrey, ICANN org's General Counsel and Secretary, sent a letter to the CEOs of both PIR and ISOC, requesting both organizations to commit to completing the process in an open and transparent manner, including agreeing to the publication of questions from ICANN org and the responses from PIR. PIR responded to ICANN org's request for additional information on 20 December 2019, and later agreed to publication of PIR's responsive materials, documents subject to limited redaction by PIR.

As the initial deadline for ICANN org to respond to PIR by either providing or withholding consent to the proposed change of control was 19 January 2020, ICANN and PIR agreed on 17 January 2020 to extend the deadline by 30 days to 17 February 2020. On 14 February 2020, the deadline was extended again by mutual agreement to 29 February 2020. On 19 February 2020, ICANN org requested additional information from PIR as part of its diligence process, and on 21 February 2020 agreed with PIR to an extension to 20 March 2020. PIR responded to ICANN's information request on 4 March 2020. On 17 March 2020, the two organizations agreed to an extension to 20 April 2020, and on 16 April 2020, a final extension was agreed upon, giving ICANN until 4 May 2020 to respond to PIR's request. On 3 April 2020, ICANN provided PIR with two sets of questions for additional information. One set of questions are in follow-up to previous ICANN inquiries designed to further understand the proposed transaction and its potential effect on PIR and the .ORG top-level domain (TLD). The second set of questions relate specifically to the PICs proposed by PIR to be included in the .ORG registry agreement. Following receipt of the questions, PIR submitted an updated proposal for its PICs on 7 April 2020. On 8 April 2020, ICANN posted a public notice that PIR provided an updated proposal. On 12 April 2020, PIR submitted to ICANN responses to the other questions posed on 3 April 2020. While PIR identified many portions of those responses as confidential, and therefore ICANN org could not post those portions on its website, the ICANN Board was provided with access to all materials submitted by PIR.

ICANN's Evaluation Process

Due to the circumstances of the proposed PIR change of control, including its planned conversion to a for-profit entity, ICANN org requested extensive additional information from PIR, including regarding details of the transaction structure, financing and other funding sources, the parties involved, the role of the Pennsylvania authorities, information related to financial resources and operational and technical capability, how the "new" PIR would be responsive to the needs of the non-commercial community, what input the .ORG community had provided to PIR on the proposed transaction and how that community input would be reflected in the operations of the "new" PIR. This evaluation of the proposed transaction, which includes the diligence imposed by the ICANN-adopted specification or policy on registry operator criteria in effect, incorporated review of financial resources, operational and technical capabilities, the transaction structure, background screening and other components. This diligence process is part of ICANN org's responsibility in evaluating this proposed Change of Control Request, and the Board has remained apprised of ICANN org's review throughout the process.

ICANN org's evaluation of PIR's Change of Control Request was more comprehensive than the evaluation that ICANN org has conducted over other change of control requests. This was necessary under the circumstances and due to the extremely unique nature of the proposed change. This Change of Control Request for PIR's Registry Agreements includes the largest registry to date to be subject to the change of control process, and we understand the proposed transaction is the most complex that has been submitted for review. Hundreds of pages of supporting documentation have been produced by PIR in multiple responses, detailing multiple levels of new entities intended for creation to support the future PIR LLC in operating under PIR's Registry Agreements. Section 7.5 of PIR's Registry Agreements with ICANN require that PIR seek ICANN's written approval for the change of control, and that ICANN must not unreasonably withhold that approval. Section 7.5 of PIR's Registry Agreements also gives ICANN the right to request additional information from PIR regarding the proposed transaction. PIR's Registry Agreements also permit ICANN to evaluate the proposed change of control transaction under the totality of the circumstances, including the public interest and the interests of the .ORG community

The Board has deliberated and discussed this issue with ICANN org on approximately 30 separate occasions, receiving current updates and providing ICANN org with direction concerning next steps. ICANN org has devoted countless hours in consideration of all aspects of PIR's request, and the collective hours from Board members devoted to consideration of this issue total in the thousands. This intensive review is required under the circumstances, as ICANN is bound to, and it is in the public interest for ICANN to uphold, the principles that ICANN's multistakeholder community agreed to include within ICANN's contracts. ICANN is responsible for conducting a thorough review and evaluation to ensure that a change of control review is more than just an exercise of checking boxes. The ICANN Board and org, in the extensive evaluation of the proposed transaction, returned multiple times to PIR for more information, as well as to ISOC, to understand the impact of the proposed transaction

In reviewing the financial stability of PIR following the consummation of the proposed transaction, the ICANN Board noted that, following the transaction, PIR would have a significant amount of debt, and be obligated to service and ultimately repay a loan in the amount of US$360 million. The Board noted that the incurrence of this debt was not for the benefit of PIR or the .ORG community, but for the financial interests of ISOC, Ethos Capital and the other investors in the transaction. While PIR has provided financial projections to ICANN org that show the capacity of PIR to generate sufficient cash flow to service the loan and repay the debt at maturity, financial projections are by their nature speculative and generally unreliable, and do not account for unforeseen circumstances. As such, if PIR's financial projections are materially inaccurate, PIR could potentially fail to generate the cash flow needed to repay the debt at maturity, and there can be no certainty that PIR or Ethos Capital will be able to refinance the debt at maturity if necessary. Accordingly, the ICANN Board believes that burdening PIR with significant debt obligations could create uncertainty as to the long-term financial stability of PIR, particularly in light of the current and likely ongoing economic uncertainty.

Much of the public discourse around the proposed transaction also focused on the question of how the .ORG registrants would be protected and served. Both the ICANN and the PIR/.ORG communities have been very vocal about the proposed transaction. Almost immediately after the transaction was announced by ISOC/PIR/Ethos Capital, the ICANN org and Board started receiving correspondence related to the matter, with the first letter of concern coming from the Internet Commerce Association on 15 November 2019, just two days after the announcement. In total, ICANN has received over 30 letters regarding this proposed transaction. A full inventory of the correspondence with relevant links to those publicly available on ICANN's correspondence page, is available in Appendix A to this Rationale. At ICANN67, the ICANN Board dedicated an entire live streamed public forum to hear from the ICANN community about the proposed PIR transaction, and published both a transcript of the event, and answers to questions that were not addressed in real time during the forum. Many of these communications focus specifically on the fact that, since 2002, PIR has been responsible for operating .ORG in a manner that serves the needs of the .ORG community, and that the information the public could access regarding the impact of the proposed transaction did not support the .ORG community in the same way. Many commenters discussed their concerns with the conversion of PIR to a for-profit entity, as for-profit entities held by private venture firms are understood to have a profit motive. In addition, commenters discussed their concerns with the removal of the protections embedded into PIR's not-for-profit mission of responsiveness to and engagement with its community, and discussed how that could impact the very policies able to be instituted at the registry level. The Board understands these concerns; the .ORG community has relied on PIR's commitments for nearly 20 years, and the proposed transaction fundamentally changes the PIR/.ORG community relationship. The Board must take that history into account, as well as the lack of meaningful engagement with that community in the design of the proposed transaction, as part of the reasonableness of withholding consent to PIR's request.

Part of how ICANN tried to address these community – and ICANN's – concerns was by continuously urging PIR, ISOC, and Ethos Capital to provide full transparency regarding the proposed transaction. Similarly, ICANN has attempted to provide the maximum amount of transparency possible throughout this process. This has included publishing the requests for information and the answers (subject to requested redaction by PIR for confidentiality reasons) to ICANN org's questions. Additionally, ICANN org has published several blogs and announcements from ICANN to the ICANN community designed to provide updates on the process.

Beginning in December 2019, PIR, ISOC and Ethos Capital began engaging with the .ORG community. They utilized webinars, blog posts, and press releases among other things in an attempt to listen and assuage concerns from their community related to this proposed

transaction. According to PIR and Ethos Capital, "we consistently heard three primary concerns expressed from the transaction: (1) pricing, (2) commitment to free expression; and (3) use of registrant and user data." On 21 February 2020, PIR and Ethos Capital proposed to the .ORG community to voluntarily adopt a legally binding amendment to the .ORG registry agreement in the form of a Public Interest Commitment ("PIC") following the closing of the proposed sale of PIR to address concerns voiced by some in the .ORG Community. From 3 March through 13 March 2020, PIR conducted what it called a "Public Engagement Period" where PIR and Ethos Capital collected written feedback about their proposed PIC, and addressed the feedback in a summary on their website dedicated to the proposed transaction. PIR submitted a proposed PIC to ICANN for consideration on 16 March 2020. On 7 April 2020, PIR submitted an updated PIC to ICANN for consideration, with changes addressing certain of the questions ICANN posed regarding the 16 March proposal.

The 7 April version of the PIC outlines five primary commitments for PIR:

1. A commitment to restrict price increases based on a specified formula until June 2027 (2 years prior to the end of the term of the current Registry Agreement). This includes a table clearly listing the maximum allowable wholesale price of a .ORG domain name for each of the 8 years.

2. The creation of a Stewardship Council to provide independent advice to the registry operator regarding modifications proposed by PIR to certain registry policies regarding: (x) censorship and freedom of expression; and (y) use of .ORG registrant and user data (the "Designated Policies"). The Stewardship Council would have the binding right to veto any modification to the Designated Policies.

3. To establish a "Community Enablement Fund" (without a specific fund amount) to provide support for initiatives benefiting .ORG registrants.

4. To produce and publish an Annual Report that self-assesses compliance with the PIC. The Annual Report will also include a transparency report disclosing the number of .ORG domain name registrations that were suspended or terminated by Registry Operator during the preceding year under Registry Operator's Anti-Abuse Policy or pursuant to court order.

5. A commitment to allow any subsequent revisions to the PIC to undergo ICANN's public comment process as part of ICANN's consideration of such proposed revisions.

Following ICANN org and Board's review of the proposed PIC, ICANN shared feedback with PIR regarding the commitment related to the Stewardship Council and its role. PIR noted its intention to revise the PIC in line with the concerns identified by ICANN, and PIR committed that its PIC could be updated to support the Stewardship Council having powers related to enforcement as well as development of relevant policies, and in a way to make ICANN org's enforcement powers capable of objective application. The Board notes that a majority of the comments received during the public notice period continue to raise concerns and questions about the future commitments for how PIR will continue to serve the .ORG community, as well as about the process within ICANN to reach a decision on PIR's request.

Other than the pricing issues, the items addressed in the proposed PIC are similar to those that are currently embedded within PIR's structure. Whereas PIR today has an Advisory Council embedded into its structure to serve as an intermediary between end users and PIR, and remaining accountable to that group is within PIR and ISOC's control, the "new" PIR would look to ICANN to enforce that community relationship through an untested "Stewardship Council" through the PICs governing PIR's relationship with that Stewardship Council, including on matters of PIR's internal policies. Although the PICs address some of the accountability concerns, the ICANN Board is not satisfied that ICANN org should be the new backstop for holding PIR accountable to its community as contemplated under the PICs. PIR has operated for nearly 20 years with internal mechanisms to support and protect its community. PIR and Ethos clearly recognize that responsiveness to the .ORG community is an important element for the success of this proposed transaction; it is unreasonable to now expect ICANN to accept that burden of enforcement in order to allow PIR and Ethos' preferred corporate structure to move forward. In addition, while intended to include members who are independent of PIR and Ethos Capital, the membership of the Stewardship Council is subject to the approval of PIR's board of directors and, as a result, could become captured by or beholden to the for-profit interests of PIR's owners and therefore are unlikely to be truly independent of Ethos Capital or PIR's board. The Board's concerns here have also been raised by many people or entities who shared their thoughts with ICANN after public notice was provided on the 7 April 2020 revision to PIR's revised PIC.

The ICANN Board also remains concerned with the lack of transparency concerning Ethos Capital's exit strategy for the PIR investment or its plans relating to capital disbursements from PIR's operations to Ethos Capital and the other investors. Ethos Capital has maintained that its investment horizon is 10 years and that it has no current plans to distribute excess PIR capital to investors. ICANN cannot be assured that Ethos Capital's investment horizon will not change (as there is no enforceable commitment in this respect) or the minority investors in the transaction will not pressure Ethos Capital to pursue an exit from PIR prior to 10 years. In addition, while PIR has advised ICANN that there will be certain limitations on PIR's ability to distribute capital to its investors (such as covenants in credits agreements relating to the US$360 million of debt incurred to help finance the transaction), the Board cannot be assured that such distributions will not be made, which could cause PIR to be drained of its financial resources.

In addition, ICANN considered the fact that Ethos Capital is a recently formed private equity firm, without a history of success in owning and operating a registry operator. While it is anticipated that PIR's existing management team will continue post-closing, there is no guarantee that such management will in fact remain at PIR post-closing for an extended period of time. In addition, the fact that Ethos Capital's founder was a managing partner that led his prior private equity firm's acquisition of Donuts only demonstrates a track record of acquisition and does not demonstrate an ability or track record of successfully operating a registry operator, particularly one of the size of .ORG. Thus, Ethos Capital's lack of experience and success in operating a registry operator is concerning for a registry with over 10.5 million domain name registrations.

The ICANN Board also considered the information provided by PIR concerning the investors involved in the transaction, and noted that PIR declined to provide the specific ownership interests of the investors in the transaction (it only provided general categories of ownership levels). In addition, ICANN has not been provided detailed information concerning various minority investors (many of whom are entities, likely with additional investors), including vehicles through which significant minority investors (the apparent second largest investor to Ethos Capital) will make its investment.

The ICANN Board also considered the ability of PIR to engage in the business operations and practices that Ethos Capital and PIR argue will benefit the .ORG community solely as a result of the transaction. No evidence has been provided to ICANN that demonstrates that PIR (as a non-profit entity) is not currently able to pursue these valuable business initiatives, which could benefit the .ORG community, without the risks associated with the consummation of the transaction.

Since the time that ISOC, PIR and Ethos Capital announced the proposed transaction, there has been misunderstanding of ICANN's role. Many have been looking to ICANN to answer questions that are better posed to ISOC or to Ethos Capital. Many appear to be looking to ICANN to cure an apparent lack of engagement by ISOC with ISOC's community through engagement with ICANN and the ICANN community, even though many of the decisions made by ISOC in solicitation and acceptance of Ethos Capital's proposal are outside of the type of decisions that are able to be changed through ICANN. However, the ICANN Board has endeavored to, and encouraged and directed ICANN org to, allow for engagement opportunities, such as the public forum highlighted above. The Board is aware of and has considered each of the letters sent to it, and has followed this issue very closely.

Reviews by the California and Pennsylvania Authorities of the Proposed Transaction

California Attorney General

On 23 January 2020, ICANN received a subpoena from the Office of the Attorney General of the State of California (CA-AGO) regarding the proposed transfer of PIR from ISOC to Ethos Capital. The CA-AGO, which by statute supervises the operations of all not-for-profit entities in California, including ICANN, states that it is "analyz[ing] the impact to the nonprofit community, including to ICANN." Subsequent to ICANN's receipt of this letter, the CA-AGO requested more time to complete his review. The letter served as one factor in ICANN org requesting more time from PIR to complete the review of the transaction , as the ICANN Board and org had already identified that ICANN needed additional information for its due diligence, and additional time was needed for ICANN's review.

On 15 April 2020, ICANN received another letter from the CA-AGO regarding PIR's change of control request. In this letter, the CA-AGO "urge[d] ICANN to reject the [proposed] transfer of control" based on a determination that it "raises serious concerns." Citing ICANN's commitment to pursue the public interest as expressed in its Articles of Incorporation, the CA-AGO opined that, if permitted to purchase PIR, "Ethos Capital . . . will no longer have the unique characteristics that ICANN valued at the time that it selected PIR as the nonprofit to be responsible for the .ORG registry."

The CA-AGO cited concerns such as the uncertainty about Ethos Capital as a brand-new entity, the private investors involved in financing the transaction, and the future operation of the .ORG registry, including the adequacy of PIR's future revenues and a lack of transparency regarding Ethos Capital's future plans. Based on the foregoing, the CA-AGO deemed these risks particularly serious in light of "the unique nature of the .ORG community" and concluded that approval of the transaction "may place at risk the operational stability of the .ORG registry." The CA-AGO also highlighted its concerns with how PIR's need to service debt obligations could impact the continued viability of the .ORG registry. In light of these and other concerns, the CA-AGO concluded that "the .ORG registry and the global Internet community – of which innumerable Californians are a part – are better served if ICANN withholds approval of the proposed sale and transfer of PIR and the .ORG registry to the private equity firm Ethos Capital." The CA-AGO stated that "[i]n light of . . . the objectives stated in ICANN's articles of incorporation and bylaws . . . ICANN must exercise its authority to withhold approval."

ICANN is a non-profit public benefit corporation organized under the laws of the state of California. As such, the CA-AGO asserts authority over ICANN in several relevant respects. Because ICANN is registered as a charitable nonprofit corporation, the CA-AGO asserts regulatory power over ICANN pursuant to the California Supervision of Trustees and Fundraisers for Charitable Purposes Act. *See, e.g.*, Cal. Gov. Code section 12596 (authorizing Attorney General to maintain action "to enforce a charitable trust" with respect to covered charitable entities); section 12598(a) (authorizing Attorney General to maintain action "for ensuring compliance with trusts" as to such entities; authorizing Attorney General action "for ensuring compliance with . . . articles of incorporation", and authorizing Attorney General to "protect[] assets held by charitable trusts and public benefits corporations"). The CA-AGO also asserts more general corporate regulatory authority over ICANN pursuant to its powers under the California Corporate Code. *See, e.g.*, Cal. Corp. Code section 5250 (authorizing the CA-AGO to address a "fail[ure] to comply with trusts which [a corporation] has assumed" and authorizing the Attorney General to redress a "depart[ure] from the purposes for which [a corporation] is formed").

The CA-AGO explained his understanding of what ICANN's Articles of Incorporation and Bylaws, and the mission defined therein, compel ICANN to do when considering PIR's request. In his authority to speak for the public interest for California, the CA-AGO determined that California's public interest in the .ORG registry running as a home for noncommercial entities, and that the public interest would be better served by ICANN withholding approval of the change of control. As the CA-AGO's letter observes, his determination is buoyed by the significant opposition received from other organizations and politicians, with virtually no counterbalancing support except from the parties involved in the transaction and their advisors.

The Board recognizes that the CA-AGO's 15 April 2020 letter might not reflect all recent information submitted by PIR to ICANN or directly to the CA-AGO in connection with the PIR's request. That, combined with the CA-AGO's closing note that he continues its investigation and will take "whatever action necessary to protect . . . the nonprofit community" support ICANN in its determination that it is reasonable to withhold consent at this time. The ICANN Board's action is also reasonable in light of its consideration of the role of the CA-AGO in overseeing whether ICANN is acting in compliance with its Articles of Incorporation. The Board takes the CA-AGO's inputs seriously both in the substance and in impact. Further, in considering the CA-AGO's letter as part of its overall evaluation process, the Board also considered the statement by the CA-AGO that approval of PIR's change of control request would be in contravention of the CA-AGO's declared public interest, and considered that statement in line with all of the other circumstances of the transaction as available to the Board, and concurs in some of the factors that contribute to the CA-AGO's urged outcome.

The ICANN Board considers the CA-AGO's letter as one aspect of support for the reasonableness of withholding consent from the requested change of control, but the letter does not alone determine or require this outcome. The Board considers all of the aspects of the proposed transaction and the information available to the Board.

Pennsylvania Attorney General

The Pennsylvania Attorney General also has a role in oversight of PIR, and in reviewing the proposed conversion of PIR from a not-for-profit to a for-profit entity. The ICANN Board understands that the Pennsylvania process will not be completed prior to 4 May 2020, and therefore ICANN does not know at this time either the PA Attorney general's view on the proposed conversion of PIR to for-profit status, or whether the relevant court in Pennsylvania will authorize the conversion. The Board notes that the lack of approval from the Pennsylvania authorities has remained an area of concern for the Board, and weighs towards the reasonableness of the Board's withholding consent at this time. The Board notes that understanding how the Pennsylvania authorities evaluate Pennsylvania's public interest in considering the proposed conversion is a relevant and missing piece of information today.

Conclusion

The Board's action is in line with ICANN's mission because ICANN has performed significant due diligence to comply with its contractual obligation to consider PIR's request, and to meet the responsibility of coordinating the unique identifiers in a responsible manner. ICANN's actions are thereby in accordance with ICANN's Articles of Incorporation and Bylaws' public interest mandates, and are also aligned with how the CA-AGO explained his views of the public interest. Taking this action supports ICANN's ability to continue performing all aspects of ICANN's mission. Specifically, as it relates to the operation of the impacted registries, the ICANN Board has no indication that the security and stability of those registries is at risk, or to the unique identifier system, if ICANN does not consent. The public interest is also served on balance through this action, in supporting the multistakeholder model and the contractual principles entrusted to ICANN, and in taking the necessary steps to maintain the security and viability of ICANN as an entity. The ICANN Board must take into account all circumstances here. The not-for-profit PIR entity has enjoyed a close and responsible relationship with its community for nearly 20 years. Now that PIR has been a successful entity, growing to US$1 billion in valuation, ICANN is asked to allow PIR to be sold to an untested private equity firm, removing the protections of the not-for-profit status and burdening the entity with US$360 million in debt in the midst of current and likely ongoing economic uncertainty. Along with that, when pressed for information on how the sale will continue to serve and bring value to the .ORG community, the solution is for ICANN to take on enforcement responsibility for the PIR/community relationship and for reliance on an untested Stewardship Council model and other PICs. ICANN entrusted to PIR the responsibility to serve the public interest in the operation of the .ORG registry, and now ICANN is being asked to transfer that trust to a new entity without a public interest mandate. This proposed transaction has posed difficult questions to the ICANN Board and the community, and the totality of the circumstances supports a denial in this instance. If PIR is able to provide additional information that resolves the concerns raised by the Board, PIR remains able to re-submit or initiate a new Change of Control Request.

Published on 30 April 2020

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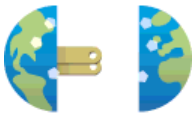
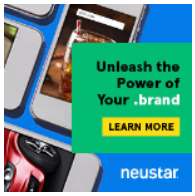
EXHIBIT J

DOMAIN INCITE

patents.law

mmx.co





RECENT POSTS

Google launches .meet gTLD after Meet service goes free during lockdown

Aussie ccTLD surges under coronavirus lockdown

Spring Break redux! ICANN picks Cancun for 2023 meeting

ICANN's .org decision was NOT unanimous, and it was made in secret

Donuts kicks down .place fences after attempt at innovation

.org sale officially dead

Afilias promotes .vote domains amid US vote-by-mail controversy

After Zoom trolling, ICANN 68 will be password-protected

Despite Brexit, .eu actually returned to growth in Q1

Donuts may make .travel names easier to buy after acquiring its first legacy gTLD

Kevin Murphy, February 14, 2018, 16:22:36 (UTC), Domain Registries

Donuts has added .travel to its swelling portfolio of gTLDs, under a deal with original registry Tralliance announced today.

It's the company's first acquisition of a legacy, pre-2012 gTLD, and the first "community" gTLD to join its stable of strings, which now stands at 239.

.travel went live in 2005, a part of ICANN's 2003 round of "sponsored" TLD applications.

As a sponsored TLD, .travel has eligibility and authentication requirements, but executive vice president Jon Nevett told DI that Donuts will look at "tinkering with" the current process to make domains easier to buy.

The current system requires what amounts to basically a self-declaration that you belong to the travel community, he said, but you have to visit the registry's web site to obtain an authentication code before a registrar will let you buy a .travel domain.

Given that the community captured by .travel is extremely broad — you could be somebody blogging about their vacations and qualify — it seems to be a barrier of limited usefulness.

Nevett said Donuts has no immediate plans to migrate the TLD away from the Neustar back-end upon which it currently sits.

The rest of its portfolio runs on its own in-house registry platform, and one imagines that .travel will wind up there one day.

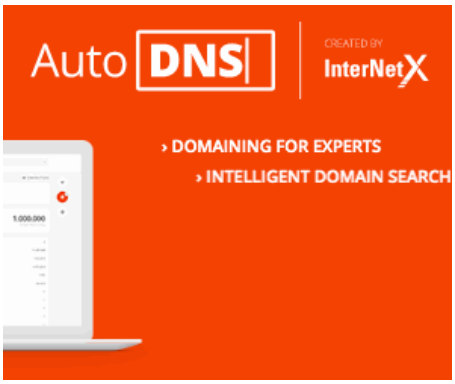
While .travel is one of Donuts most-expensive domains — priced at $99 retail at its own Name.com registrar — Nevett said there are no plans to cut pricing as yet.

There may be discounts, he said, and possibly promotions involving bundling with other travel-related gTLDs in its portfolio.

Donuts already runs .city, .holiday, .flights, .cruises, .vacations and several other thematically synergistic name spaces.

.travel had about 18,000 domains registered at the last count, with EnCirca, Name.com, 101domain, Key-Systems and CSC Corporate as its top five registrars.

It peaked 10 years ago at just under 215,000 registrations, largely due to to speculative bulk registrations made by parties connected



RECENT COMMENTS

Voice Acting:
If you are sitting around all day at home, "Hey, I want to start a business! Let me buy a domain name."... read more

Kyle-K:

ICANN whistleblower expects to be fired after alleging budget irregularities, bugged meetings

Portugal ccTLD says growth better than expected during pandemic

The .org deal may be dead and buried, but calls remain for PIR to lose its contract

"Dangerous precedent" as ICANN rejects $1.13 billion .org buyout

ICANN may scrap its $0.18 reg tax in coronavirus "solidarity"

Domain industry likely to suffer from coronavirus as ICANN slashes budget by 8%

Decision on .org deal may come sooner than you think

ICANN meeting got "Zoombombed" with offensive material

CentralNic does not expect big coronavirus impact as it posts almost-doubled revenue for 2019

Verisign expects to sell fewer domains because of coronavirus

Coronavirus lockdown is working out great for at least one registry

Coronavirus could cause "high risk of widespread outages", ICANN says

Free domains registrar gets FOURTH breach notice

Four more dot-brands join the gTLD deadpool

As ICANN meets to decide .org's fate, California AG says billion-dollar deal must be rejected

Whois privacy talks in Bizarro World as governments and trademark owners urge coronavirus delay

GoDaddy signs up 30 partners to lockdown-era marketing scheme

Kuala Lumpur meeting cancelled and ICANN 68 could be even trickier online

Five SAFE ways to buy and sell domains during the coronavirus pandemic

To show new focus on registry, Uniregistry dumps "registry" from its brand. Um…

No ICANN tax relief for Chinese registrars

ICANN declares coronavirus a "natural disaster" to protect expired domains

Ethos clarifies .org price rises, promises to reveal number of censored domains

End of the road for Neustar as GoDaddy U-turns again

to the registry that were dumped a couple of years later.

It's been at under 20,000 names for the last five years, shrinking by small amounts every year.

The price of the acquisition was not disclosed.

Related posts (automatically generated):

.travel domains to be opened to all

Space.travel – the awesomest .travel domain – sells

Two more legacy gTLDs agree to use URS

Tweet

Tagged: .travel, acquisition, donuts, neustar, new gTLDs, tralliance

ADD YOUR COMMENT

Name (required)

Mail (will not be published) (required)

Web site (optional)

Submit Comment

Makes you wonder how much this was helped along by the promotional giveaway done by one of the largest registrars in Aus... read more

parse:
Moroccan Dirham... read more

Dan:
Have any examples of supposed "innovation" in the new gTLD space actually panned out?... read more

John:
Excluding all forms of competition is a violation of US competition laws. ICANN's agreement with the registry operators... read more

gpmgroup:
Every one in ICANN knows (or should know) that domains are not substitutable the cost to move i.e. design, stationery, s... read more

Mark Thorpe:
ICANN never walks a straight line and tells the whole truth, so them saying the entire Board stands by this decision, bu... read more

John:
Where are the statements from the other ICANN board members? Who attended these secret meetings? Jones Day and JJ li... read more

Avri Doria:
I have not worked for either PIR or Donuts, or any other contracted party, since before I joined the Board. This was a p... read more

DomainBoss:
Hundreds of thousands a year in huge salaries and fun at public expense. Then these guys have the nerve to call ICANN... read more

DomainBoss:
I am just glad that this Anti-Public deal was finally rejected. ICANN has done first good thing in their entire exis... read more

DomainBoss:
There is hardly any place for .place TLD in domaining as new GTDs like these are failing more and more.... read more

DomainBoss:
It is ICANN's moral and ethical duty to transfer the control of .ORG registry away from disgraced ISOC/PIR combo to anot... read more

Mogreen:
Hmmm - wonder why Avri Doria voted in favor of the sale Avri Doria is a research consultant. Her professional activit... read more

John:
So Jon Nevett is telling everyone "PIR is no longer for sale to any other party" If that was the case – why did Jon N... read more

Jack:
.org now needs a new steward. PIR doesn't care at all about .org registrants and was willing to throw all non profits... read more

Rob:
If I were PIR, I would raise prices for a .org to $ 19.99 immediately. ISOC lost out on a huge endowment fund. The... read more

Chris Bell:
Surely at an internet convention the name given to us at birth is our fake name, while the name we made up ourselves is ... read more

Theo Geurts:
Since ICANN participation is open to everyone and their dog, anyone can apply to a WG or a public session or IRT. Settin... read more

Steve GOBIN:
LOL... read more

Owen:
The earliest reference re: government ID I could find was ICANN61: "All attendees will be required to present valid gove... read more

John:
Given the nature of these allegations, I find it concerning ICANN does not show this particular request on their website... read more

and buys out its registry biz

ICANN to consider cancelling ICANN 68 tomorrow

Coronavirus: more delay and free domains for .gay

CentralNic seeing no impact from coronavirus

ICANN expects “significant” budget impact from coronavirus

ICANN’s number two Cyrus Namazi quits. Probably due to sexual discrimination claims.

ICANN grants Verisign its price increases, of course

ALL .za domains have to link to government coronavirus web site

Namecheap and others banning coronavirus domains

Go here to help fight against coronavirus abuse

As it releases free download, DomainTools says 68,000 dangerous coronavirus domains have been registered

No .com price increases this year. Thanks, coronavirus!

US officials gunning for coronavirus domains

Nominet to intercept dangerous coronavirus domains

An open question to the domain name industry about coronavirus

US senators tell ICANN to reject .org deal

More ICANN events cancelled for May

More domain industry response to coronavirus

.org decision delayed another month

Delay .org deal because of… coronavirus? Gimme a break

Not every coronavirus domain registrant is a douchebag

Roundup: domain industry starts to respond to coronavirus pandemic

At ICANN 67, nobody knew you’re a dog

GoDaddy cancels in-person investor day over coronavirus fears

WE’RE ALL GONNA DIE! In other news, ICANN 67 was… “muted”

Facebook WILL sue more registrars for cybersquatting

ICANN chair: “all options open” on .org deal

Could .org debate bring back the glory days of ICANN public forums?

The latest industry C-suite musical chairs

John:
Why was this particular reqeust not published on ICANN's DIDP Requests and Responses" page? How many other requests t... read more

lifesavings.online:
Vaguely related: President Trump is using http://share.djt.app to promote campaign. It forwards to his .com but that ... read more

Owen:
ICANN started requiring government IDs to obtain name badges several years ago- perhaps it was ICANN57 in Hyderabad?... read more

Alfonso Bedoya:
"The only reason the DIDP (pdf) is in the public domain at all is that Sudowski copied it to the mailing list of the Emp... read more

David:
Do it with any other termination but not .Com .Net .Org They shouldn't be a privatization for them.... read more

Rubens Kuhl:
I was sure it was a rick-roll, but I was wrong.... read more

Antony Van Couvering:
Oh, the ironies... Some may recall that ICANN was set up in response to another Internet governance effort, the gTLD-... read more

Brad Mugford:
No, the “dangerous precedent” was handing over a legacy extension to a brand new private equity company with no track re... read more

John Berryhill:
Here: https://www.youtube.com/watch?v=UO1T9dkWCL8... read more

Rubens Kuhl:
Where can I find the Ethos statement in full ?... read more

Domenclature.com:
Ouch!!... read more

John Berryhill:
The full Ethos statement is much better than the excerpt above, especially the part about "wicked thieving Hobbitses ste... read more

Chris Bell:
Both ICANN and the Attorney General did the right thing, by defending the interests of the registrants eventually. I... read more

Mark Thorpe:
"Ethos responded angrily almost immediately" No one feels bad for you.... read more

Konstantinos Zournas:
Yeah, I forgot to include Michele Neylon to my list of useful idiots... Sorry about this. https://onlinedomain.com/2... read more

Ciera Hutson:
Wow. This article. It's just wrong- let me count the ways..... read more

Andrew:
Which one company in the world will benefit the most from this rebate ? Yes the same company asking for it (Godaddy... read more

Richard Funden:
By Gabthars hammer, what a savings!... read more

Jack:
The .ORG deal is DEAD. Otherwise ICANN will be smashed by the California Attorney General and it's the last (bad) dec... read more

Mark Thorpe:
The .ORG deal should already be rejected by now!... read more

Samit:
I'll be extremely surprised if the sale doesn't go through. Public comment and objections are being ignored for every... read more

Bub:
Not sure domain investors are opposed to Ethos. But a slew of major nonprofits, some senior and respected politicians, t... read more

Brad Mugford:

Poblete to replace Disspain on ICANN board

Chinese registrars ask ICANN to waive fees due to Coronavirus

Most languages won't be available at ICANN 67

Domain Incite turns 10 today. What the fuck have I done with my life?

Ethos volunteers for .org pricing handcuffs

Yup. ICANN cancelled Cancun

The Queen has beef with Prince Harry's domain name

ICANN wants to take your temperature before letting you into ICANN 67

ICANN might cancel Spring Break over Covid-19 fears

Verisign shits on domainers, again

9,000 people tell ICANN they don't want .com price increases. Here's what some of them said

Covid-19: It's official, domainers are faster than journalists

ICA will help you support .com price increases (but doesn't want you to)

.gay hires pop star equality campaigner as spokesperson

Watch: climate change denier on why she trusts .org more than .com

Ethos' .org pricing promise may be misleading

Hacking claims resurface as .hotel losers force ICANN to lawyer up again

ICANN refuses to release more info on .org deal

Possibly the strangest new gTLD acquisition yet

California .org probe — existential crisis or blessed relief for ICANN?

As Cancun looms, ICANN bans China travel because of Coronavirus

XYZ expands gTLD stable as L'Oreal exits the domain game

Is the .co rebid biased toward Afilias? Yeah, kinda

Amazon governments vow revenge for "illegal and unjust" ICANN decision on .amazon

SaveDotOrg to protest outside ICANN HQ. #lol

Ten years ago I predicted Oscar winners wanted a .movie gTLD. Was I right?

ICANN gets a new European chief

New CEO to step into the lion's den at auDA

Secrets of the .org deal revealed, but much info

A better show of "solidarity" would be for ICANN to side with the vast majority of stakeholders and quit making decision... read more

Konstantinos Zournas:
Yes, let's look at the $30-40 million and leave the $2-3 billion untouched.... read more

Brad Mugford:
Looks like ICANN might need more shady kickbacks, like in the Verisign .COM extension... Brad... read more

Michiel Henneke:
As the author of the original piece I'd like to add: most entrepreneurs going online now are working local, regional or ... read more

Ron Andruff:
My personal view, from experience and observation: This action (resign before your fired) was LOOOOONNNNGGG over due. Th... read more

Chris:
A lot of existing businesses have also been unable to make money from their stores, while there has been a large increas... read more

James Gannon:
Went off without a hitch for the record... read more

Voice Acting:
People got ideas, they got time, and they are home. A great combination for domain registrations.... read more

John:
But the key issue is that there is no "balanced consensus" in the ICANN multi-stakeholder model anymore. ICANN is no lo... read more

Acro:
What an elite group of privileged bureaucrats!... read more

John Berryhill:
Once again, it is time to shift gears from.... "If ICANN doesn't do (insert demand here), then government authorities... read more

Rubens Kuhl:
Most EU ccTLD models have all the features BC, IPC and GAC don't like, including treating legal and natural persons the ... read more

Konstantinos Zournas:
There is now a new deadline: May 4. This is also a very important point: "My office is also concerned that the .ORG ... read more

lifesavings.online:
A lot of it is about a loan. I wrote so during the very earliest days on one of these blogs. Somone's back is against... read more

Chris:
At ICANN they love to reinvent the wheel. But within the EU there are already at least 27 GDPR compliant whois models in... read more

lifesavings.online:
We need whois. Law enforcement, as stated. Why should icann be the only ones to know? They aren't doing anything to shut... read more

Observer:
So you're saying that someone who is now working out of their home due to this pandemic situation can't acquire an expir... read more

Rubens Kuhl:
Because that's the foreseen moment to exit and cash out.... read more

page howe:
hmm im not sure the harm to a possible potential new owner will compare to the loss of long time names to current owners... read more

Green Jobs:
This is hilarious... thanks for sharing!... read more

Adam:
Late for April Fool's but love it.... read more

Acro:
But that happened more than a month ago! https://domaingang.com/domain-news/unr-com-is-the-new-uni/... read more

Jovenet Consulting:

remains private

Registrar terminated after what looks like domain hijacking

NamesCon publishes full agenda for debut Austin conference

.gay prices and availability revealed as registry promises to give 20% of revenue to charity

Now .org critics actually want to take over the registry, blocking billion-dollar sale

Verisign pays ICANN $20 million and gets to raise .com prices again

ICANN predicts shrinkage in new gTLD sector

ASO uses super powers to demand ICANN turn over .org buyout docs

Now PIR rubbishes .org "downtime" claims

DI Leaders Roundtable #4 — Big predictions for 2020

Afilias denies .org will go down post-acquisition

Palestine to release all one-character .ps domains, at a price

PIR thinks 20-year domain regs are a good idea

Amazon beats South America! Dot-brand contracts now signed

Q3 industry growth driven by .tk, .com and .icu

ICANN throws out second .org appeal, so URS stays

Warning (or threat?) prices must go up or .org will suffer DAYS of downtime

Russian company approved as gTLD escrow provider

Guy gets 14 years for trying to steal a domain with a gun

GoDaddy girls often make more money than the men

Non-coms want .org's future carved in stone

Kamel's deputy gets promoted at ICANN

ICANN delays approval of .org acquisition

AlpNames died months ago. Why is it still the "most-abused" registrar?

Ethos promises to keep .org for many many many many years

Amid .org controversy, Cerf predicts the death of all domains

#SaveDotOrg to hold public web conference tomorrow with Ethos execs

As pricey .new launches, Google reveals first set of big-name users including rapper Drake

Three more dot-brands fizzle out. Total now 69,

Something is for sure: they're coming with a .BRAND new gTLD offer for Round 2 (at least). Good point, there's space for... read more

John:
Why are price caps only in place for 7 years and not the full term of the contract? This makes no sense!... read more

Mark Thorpe:
Reject the .ORG deal ICANN and Goran Marby. Do the right thing for once!... read more

Mike:
Did they sell it to the mafia, shakedowns online? There are thousands of extensions, extortion of existing .orgs esta... read more

John:
What happens after 7 years? Ethos will be able to raise the price of each domain to $85.00 USD or $100.00 USD? There... read more

John:
Take a step back for a second - what is the justification for doubling .Org fees over the next 7 years? Why such a dram... read more

Jack:
Nobody want their 10% per year increase. Are they nuts ? $19.35 for a .ORG in 2026 and then the sky is the limit, why ... read more

Observer:
This provision doesn't make sense since it get's in the way of people who may have lost their job and need to start a ne... read more

Camino:
Good for you! We know each other (business with BR) so it's crystal clear to me what you do for a living. Thank you.... read more

dudes

Are ISOC's claims about .org's history bogus?

Criminal .uk suspensions down this year

Governments kill off another gTLD bid

Four big developments in the .org pricing scandal

DI Leaders Roundtable #3 — What did you think of ICANN 66?

Petition launched to fight .org deal

ICANN board meets to consider PIR acquisition TODAY

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EXHIBIT K

Domain Names

Overview
Root Zone Management
- Overview
- **Root Database**
- Hint and Zone Files
- Change Requests
- Instructions & Guides
- Root Servers

.INT Registry
.ARPA Registry
IDN Practices Repository
Root Key Signing Key (DNSSEC)
Reserved Domains

Delegation Record for .HOTELES

(Generic top-level domain)

Sponsoring Organisation

Travel Reservations SRL
Ruta 8 km 17,500, Edificio Synergia, Oficina 101, Zonamerica, Montevideo, UY 1600
Uruguay

Administrative Contact

New Business Team Leader
Travel Reservations SRL
Ruta 8 km 17,500, Edificio Synergia, Oficina 101, Zonamerica, Montevideo 91600
Uruguay
Email: gtldscontact@despegar.com
Voice: +54.1148943500 ext: 2129
Fax: +541148943500

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21575 Ridgetop Circle
Sterling, VA 20166
United States
Email: technical1@registry.neustar
Voice: +1 844-677-2878
Fax: +1 571-434-5401

Name Servers

HOST NAME	IP ADDRESS(ES)
ns5.dns.nic.hoteles	156.154.173.2 2610:a1:1075:0:0:0:1:2
ns2.dns.nic.hoteles	156.154.170.2 2610:a1:1072:0:0:0:1:2
ns6.dns.nic.hoteles	156.154.174.2 2610:a1:1076:0:0:0:1:2
ns1.dns.nic.hoteles	156.154.169.2 2610:a1:1071:0:0:0:1:2
ns4.dns.nic.hoteles	156.154.172.2 2610:a1:1074:0:0:0:1:2
ns3.dns.nic.hoteles	156.154.171.2 2610:a1:1073:0:0:0:1:2

Registry Information

URL for registration services: http://www.despegar.com

IANA Reports

- Delegation of the .hoteles domain to Travel Reservations SRL (2015-06-23)

Record last updated 2020-05-01. Registration date 2015-05-14.

The IANA functions coordinate the Internet's globally unique identifiers, and are provided by **Public Technical Identifiers**, an affiliate of **ICANN**.

Privacy Policy **Terms of Service**

Domain Names

Overview
Root Zone Management
- Overview
- **Root Database**
- Hint and Zone Files
- Change Requests
- Instructions & Guides
- Root Servers

.INT Registry
.ARPA Registry
IDN Practices Repository
Root Key Signing Key (DNSSEC)
Reserved Domains

Delegation Record for .HOTELS

(Generic top-level domain)

Sponsoring Organisation

Booking.com B.V.
Herengracht 597, Amsterdam, Noord-Holland, 1017 CE NL
Netherlands

Administrative Contact

Christopher Niemi
MarkMonitor Inc.
3540 East Longwing Lane, Suite 300, Meridian, Idaho 83646
United States
Email: dothotels@markmonitor.com
Voice: +1 208-389-5740
Fax: +1 208-389-5771

Technical Contact

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Neustar, Inc.
21575 Ridgetop Circle
Sterling, VA 20166
United States
Email: technical1@registry.neustar
Voice: +1 844-677-2878
Fax: +1 571-434-5401

Name Servers

HOST NAME	IP ADDRESS(ES)
ns6.dns.nic.hotels	156.154.174.3 2610:a1:1076:0:0:0:1:3
ns3.dns.nic.hotels	156.154.171.3 2610:a1:1073:0:0:0:1:3
ns4.dns.nic.hotels	156.154.172.3 2610:a1:1074:0:0:0:1:3
ns2.dns.nic.hotels	156.154.170.3 2610:a1:1072:0:0:0:1:3
ns5.dns.nic.hotels	156.154.173.3 2610:a1:1075:0:0:0:1:3
ns1.dns.nic.hotels	156.154.169.3 2610:a1:1071:0:0:0:1:3

Registry Information

URL for registration services: http://www.booking.com

IANA Reports

- Delegation of the .hotels domain to Booking.com B.V. (2017-04-03)

Record last updated 2020-05-01. Registration date 2016-09-16.

The IANA functions coordinate the Internet's globally unique identifiers, and are provided by **Public Technical Identifiers**, an affiliate of **ICANN**.

Privacy Policy **Terms of Service**

503 Service Unavailable

No server is available to handle this request.

Coming Soon

Abuse Contact:

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Rerservalia Trademark Counsel - Av Corrientes 746 CABA, 1043 Argentina

EXHIBIT L

Main Agenda:

a. Appointment of Board Designee to the Third Accountability and Transparency Review Team

Whereas, the ICANN Bylaws specify that the Board shall cause a periodic review of ICANN's execution of its commitment to maintain and improve robust mechanisms for public input, accountability, and transparency to ensure that the outcomes of its decision-making reflect the public interest and are accountable to the Internet community ("Accountability and Transparency Review").

Whereas, the third Accountability and Transparency Review process (ATRT3) began with a call for volunteers for review team in January 2017.

Whereas, the proposed next steps after consultation with the community include community reconfirmation of review team nominees and the appointment of the review team by the SO/AC chairs by 30 November 2018. The third Accountability and Transparency Review Team is proposed to commence its substantive work in January 2019.

Whereas, under Section 4.6 of the Bylaws, the Board may appoint a Director or Liaison to serve as a member of the Accountability and Transparency Review Team and the Board has considered the skills and experience relevant to the third Accountability and Transparency Review Team.

Whereas, the Board Governance Committee has recommended that the Board designate Maarten Botterman to serve as a member of the third Accountability and Transparency Review Team.

Whereas, the Organizational Effectiveness Committee recommended that the Board request ATRT3 to adopt its Terms of Reference and Work Plan within 60 days of convening its first meeting and submit these documents to the Board and to the leadership of the Supporting Organizations and the Advisory Committees, to confirm compliance with Bylaws provisions and ICANN community expectations.

Whereas, the Bylaws specify that the Accountability and Transparency Review Team should issue its final report within one year of convening its first meeting, which informs the timing requested by the Board.

Resolved (2018.10.25.14), the Board hereby appoints Maarten Botterman to serve as a member of ATRT3.

Resolved (2018.10.25.15), the Board requests that ATRT3 adopt its Terms of Reference and Work Plan within 60 days of convening its first meeting, and submit these documents to the Board and to the leadership of the Supporting Organizations and the Advisory Committees, to confirm that the team's scope and timeline are consistent with the requirements of the ICANN Bylaws and ICANN community expectations.

Rationale for Resolutions 2018.10.25.14 – 2018.10.25.15

Why is the Board addressing the issue?

On 1 October 2016, new Bylaws became effective following the IANA Stewardship Transition that introduced new commitments to enhance ICANN's accountability. These Bylaws incorporated the reviews that previously were found in the Affirmation of Commitments, and specified new selection procedures for convening them, now referred to as "Specific Reviews." This created an opportunity for the Board to designate a representative to participate as a member of each of the Specific Review teams.

ICANN organization launched a Call for Volunteers for ATRT3 on 31 January 2017. The community nomination process was still open when ICANN organization posted a public comment proceeding on Short-term Options for Specific Reviews (May – July 2018) to invite feedback on options on whether and how to adjust the timeline for ATRT3. ICANN organization then posted Next Steps for Reviews in September 2018, setting the proposed path forward for ATRT3 (community appointment of ATRT3 members by 30 November 2018; first meeting in January 2019).

With the launch of the third Accountability and Transparency Review in January 2017, the Board has chosen to appoint a representative for this important review. Additionally, the Board is requesting that the third Accountability and Transparency Review Team (ATRT3) provide the Board with its adopted Terms of Reference and Work Plan within 60 days of convening its first meeting.

What is the proposal being considered?

The proposal being considered is that Maarten Botterman be appointed by the Board to serve as a member of ATRT3, based on skill and experience relevant to this review. In line with established best practices for all Specific Reviews and because the Bylaws specify that ATRT3 should issue its final report within one year of convening its first meeting, the Board is requesting ATRT3 to adopt its Terms of Reference and Work Plan on a timely basis and submit these documents to the Board and to the leadership of the Supporting Organizations and the Advisory Committees.

The Terms of Reference should demonstrate at a high level how the objective of the review will be accomplished within the required time frame and with specified resources. It should provide a clear articulation of work to be done and a basis for how the success of the project will be measured. The Work Plan should detail the specific tasks to be performed to effectively complete the scope of work of the review (the topics ATRT3 will address, within the bounds of ICANN Bylaws), with clear deadlines, milestones and task owners. The Board is responsible for confirming that the Bylaws provisions for Specific Reviews are adhered to and that there are adequate resources available for ATRT3 to complete its work on a timely basis.

Which stakeholders or others were consulted?

The Board consulted with the Board Governance Committee (BGC) and the Organizational Effectiveness Committee (OEC). The BGC recommended a suitable Board designee based on the Bylaws-mandated broad scope of this review, and the skills and experience detailed in the Call for Volunteers. Based on its oversight of reviews, the OEC recommended good practices for conducting effective reviews on a timely basis. While no consultation with the community was required for this Board action, the Board took into consideration community input on Draft Operating Standards and on Short-term Options for Specific Reviews.

What concerns, or issues were raised by the community?

The community expressed strong support for all Specific Review Teams (including ATRT3) to set their own scope without prior community consultation but agreed that the Board has a responsibility to ensure adherence to the Bylaws. Additionally, the community has been supportive of ATRT3 providing timely information to the SO/AC leadership to gather community input and confirmation that their needs are addressed by the review team.

What significant materials did the Board review?

The Board reviewed relevant Bylaws sections, Specific Review Process documentation, Call for Volunteers to serve on ATRT3, public comments on Short-term options for Specific Reviews, and the proposed Next Steps for Reviews.

What factors did the Board find to be significant?

The Board found several factors to be significant:

- skill and experience required to conduct this review,
- importance of timely and clearly-formulated Terms of Reference and Work Plan, and
- the need for ICANN Community to be informed about the work of the review team on a timely basis.

Are there positive or negative community impacts?

This Board action is expected to have a positive impact on the community by adding useful skills and expertise to this important review and by encouraging timely completion of the third Accountability and Transparency Review, within the bounds of the ICANN Bylaws.

Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

This Board action is anticipated to have a positive fiscal impact, by encouraging timely and efficient completion of the third Accountability and Transparency Review work within the Bylaws-specified 12-month period. The expenses associated with conducting the third Accountability and Transparency Review are included in the ICANN Budget for Fiscal Year 2019.

Are there any security, stability or resiliency issues relating to the DNS?

This Board action is not expected to have a direct effect on security, stability or resiliency issues relating to the DNS.

How is this action within ICANN's mission and what is the public interest served in this action?

The Board's action is consistent with ICANN's commitment pursuant to section 4.6 of the Bylaws to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making reflect the public interest and that ICANN is accountable to all stakeholders.

This action will serve the public interest by fulfilling ICANN's commitment to maintaining and improving its accountability and transparency.

Is public comment required prior to Board action?

This decision is an Organizational Administrative Function that does not require public comment.

EXHIBIT M

c. Acceptance of the Second Organizational Review of the RSSAC – Final Report and Feasibility Assessment and Initial Implementation Plan

Avri Doria introduced the agenda item. Avri reviewed the background on the proposed resolution, which is set forth in the whereas clauses. Avri then read the proposed resolutions into the record.

Avri moved and Akinori Maemura seconded. The Chair called for a vote and the Board took the following action:

Whereas, the second Organizational Review of the RSSAC commenced in September 2017, in accordance with the ICANN Bylaws, Article 4, Section 4.4.

Whereas, the independent examiner that conducted the second RSSAC Review produced an assessment report that was published for public consultation on 27 February 2018, a draft final report that was published for public comment on 1 May 2018 and a final report, containing six (6) principal recommendations and nine (9) supplementary recommendations, that was published on 10 July 2018.

Whereas the ICANN community provided input via public comment on the draft final report.

Whereas, the RSSAC Review Work Party, serving as a liaison between the RSSAC, the independent examiner and the Organizational Effectiveness Committee of the Board (OEC), analyzed the independent examiner's recommendations for feasibility and usefulness, considered provisional budget implications, and anticipated resources to propose a prioritized implementation timeline.

Whereas, the RSSAC Review Work Party drafted a Feasibility Assessment and Initial Implementation Plan in which it indicated support for four (4) principal recommendations in the final report, including one (1) with modifications, and three (3) supplementary recommendations, including one (1) with modifications. The RSSAC Review Work Party did not support two (2) principal recommendations and six (6) supplementary recommendations.

Whereas, the RSSAC approved the Feasibility Assessment and Initial Implementation Plan on 2 October 2018.

Whereas, the OEC received briefings from the independent examiner on its final report and the RSSAC Review Work Party on its Feasibility Assessment and Initial Implementation Plan during the OEC meeting on 8 January 2019. The OEC also sought clarification from the RSSAC Review Work Party on its response to certain findings of the independent examiner.

Whereas, the OEC considered the final report, the Feasibility Assessment and Initial Implementation Plan, and the public comment input in order to reach a recommendation to the Board for how to proceed with the second RSSAC Review. The OEC recommended that the Board accepts both the RSSAC Review independent examiner's final report and the RSSAC Review Work Party's Feasibility Assessment and Initial Implementation Plan. The OEC also recommended that the Board instruct the RSSAC to convene an implementation working group to develop a detailed implementation plan for the recommendations, as detailed in the Feasibility Assessment and Initial Implementation Plan, within six (6) months from the adoption of this resolution. The detailed implementation plan shall also contain appropriate implementation costing. The OEC further recommends to the Board that the implementation working group is to oversee the implementation of these recommendations, once the Board has approved said detailed implementation plan, including appropriate implementation costing.

Whereas, this organizational review identified issues of succession, which the RSSAC recommends and the RSSAC proactively addressed these concerns by proposing clarifications to its leadership structure, approving a change to its Operational Procedures in March 2019 that modify the RSSAC leadership structure to consist of one RSSAC Chair and one RSSAC Vice Chair rather than two RSSAC Co-Chairs.

Whereas, Article 12, Section 2C of the ICANN Bylaws references the RSSAC leadership structure.

Resolved (2019.05.03.15), the Board acknowledges the independent examiner's hard work and thanks them for producing a comprehensive set of recommendations to improve the RSSAC's effectiveness, transparency, and accountability.

Resolved (2019.05.03.16), the Board acknowledges the work and support of the RSSAC Review Work Party during the review process, as well as its Feasibility Assessment and Initial Implementation Plan that was approved by the RSSAC on 2 October 2018 and guided the OEC's recommendation to the Board. The Board thanks the RSSAC Review Work Party for its efforts.

Resolved (2019.05.03.17), the Board accepts the final report from the independent examiner.

Resolved (2019.05.03.18), the Board accepts the Feasibility Assessment and Initial Implementation Plan.

Resolved (2019.05.03.19), the Board directs the RSSAC to convene an RSSAC review implementation working group that drafts a detailed implementation plan of the recommendations, as detailed in the Feasibility Assessment and Initial Implementation Plan, including appropriate implementation costing.

Resolved (2019.05.03.20), the detailed implementation plan shall be submitted to the Board as soon as possible, but no later than six (6) months after the adoption of this resolution. The implementation plan should contain a realistic timeline for the implementation, a definition of desired outcomes, an explanation of how the implementation addresses underlying issues identified in the final report, and a way to measure current state as well as progress toward the desired outcome. The working group shall also work with the ICANN organization to include expected budgetary implications for each of the implementation steps into its detailed implementation plan. The implementation plan shall incorporate a phased approach that allows for easy-to-implement and least costly improvements to be implemented first, with those items with more significant budget implications to be addressed later in the implementation process.

Resolved (2019.05.03.21), the Board directs the RSSAC Review implementation working group to oversee the implementation process, once the Board has accepted the detailed implementation plan. Any budgetary requests resulting from the implementation shall be made in line with the ICANN organization's annual budgeting processes.

Resolved (2019.05.03.22), the Board directs the RSSAC review implementation working group to provide the OEC with implementation reports every six (6) months on progress against the implementation plan, including, but not limited to, progress toward metrics detailed in the implementation plan and use of allocated budget.

Resolved (2019.05.03.23), the Board directs the ICANN President and CEO, or his designee(s), to publish for public comment the proposed amendments to Article 12, Section 2C of the ICANN Bylaws that reflect the changes to the RSSAC leadership structure.

All members of the Board present voted in favor of Resolutions 2019.05.03.15, 2019.05.03.16, 2019.05.03.17, 2019.05.03.18, 2019.05.03.19, 2019.05.03.20, 2019.05.03.21, 2019.05.03.22, and 2019.05.03.23. Khaled Koubaa was unavailable to vote. The Resolutions carried.