



**ELECTRONIC
FRONTIER
FOUNDATION**



**Presentation to Board
Accountability
Mechanisms Committee
on Reconsideration
Request 19-3**

25 November 2019

Who we are

- Mitch Stoltz, Senior Staff Attorney, Electronic Frontier Foundation Contact Information Redacted
- Cara Gagliano, Staff Attorney, Electronic Frontier Foundation Contact Information Redacted
- Elliot Harmon, Activism Director, Electronic Frontier Foundation Contact Information Redacted
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Background

- EFF and the Domain Name Rights Coalition submitted comments on the proposed .ORG Registry Agreement on 29 April 2019.
- EFF filed Request for Reconsideration 19-3 on 30 July 2019.
- The new .ORG contract includes the following *for the first time*:
 - The Uniform Rapid Suspension (URS) rules
 - Permission for the Public Interest Registry (PIR) to implement arbitrary “additional protections for the legal rights of third parties,” privately and without consultation with .ORG registrants or the ICANN community—*completely outside of any multistakeholder processes*.
- *These terms are harmful to the .ORG community*

ICANN Bylaws, Art. 4, Sec. 4.2(c)

A Requestor may submit a request for reconsideration or review of an ICANN action or inaction ("Reconsideration Request") to the extent that the Requestor has been adversely affected by:

- (i) One or more Board or Staff actions or inactions that contradict ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies);
- (ii) One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board's or Staff's consideration at the time of action or refusal to act; or
- (iii) One or more actions or inactions of the Board or Staff that are taken as a result of the Board's or staff's reliance on false or inaccurate relevant information.

**Ground #1: The execution of the
2019 .ORG RA contradicted
ICANN's Mission, Commitments,
and Core Values.**

- Art. 1, Sec. 1.1, Mission: “In this role, ICANN’s scope is to coordinate the development and implementation of policies . . . [t]hat are developed through a bottom-up consensus-based multistakeholder process”
- Art. 1, Sec. 1.2(a), Commitments: “ICANN commits to . . . [e]mploy open, transparent and bottom-up, multistakeholder policy development processes that are led by the private sector (including business stakeholders, civil society, the technical community, academia, and end users), while duly taking into account the public policy advice of governments and public authorities. These processes shall (A) seek input from the public, for whose benefit ICANN in all events shall act, (B) promote well-informed decisions based on expert advice, and (C) ensure that those entities most affected can assist in the policy development process”

- Art. 1, Sec. 1.2(b), Core Values: “In performing its Mission, the following ‘Core Values’ should also guide the decisions and actions of ICANN: . . .
 - (ii) Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making **to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest** and that those processes are accountable and transparent; . . .
 - (vii) **Striving to achieve a reasonable balance between the interests of different stakeholders**, while also avoiding capture”

The URS is a multistakeholder policy not meant for .ORG domains

- The GNSO wrote and approved the URS *through multistakeholder policy development processes*—**solely for new gTLDs**.
- .ORG has been around for 34 years, has approximately 10 million registered domain names, and is the third most-used gTLD. Most .ORG registrants are renewals.
 - According to registrar name.com, “[b]ecause of its heritage built on trust, .ORG is the domain people most commonly associate with organizations, companies, groups, and individuals **dedicated to making the world a better place.**”
- The URS was not designed for complicated domain name disputes between commercial and noncommercial users.
- Faster response deadlines also pose special problems for noncommercial entities.
- The result: Applying the URS to .ORG makes abusive challenges to our domain names easier, e.g., by a bad actor seeking to usurp a well-known and trusted domain name.

The new .ORG Registry Agreement facilitates censorship

- Section 2.8 empowers PIR to “at its election, implement additional protections of the legal rights of third parties.” This allows PIR to impose restrictions and consequences on .ORG registrants based not only on their domain names but also on the content of their websites.
- PIR has previously contemplated harmful new content regulation mechanisms—absent multistakeholder deliberation—and faced public outcry.
- This term is especially troubling given the Internet Society’s (ISOC) 13 November 2019 announcement that it is selling PIR to private equity firm Ethos Capital.

The GNSO is actively engaged in evaluation of the URS

- In 2016, the GNSO Council chartered the RPM WG and asked it to determine **whether “any of the New gTLD RPMs (such as the URS)” should be applied to all gTLDs.**
- After months of study of the URS, including review of *every URS case*, the issue of its application to legacy gTLDs is now squarely before the RPM WG.
- Individual URS proposal #31 asks the very basic question of **“whether the URS should become an ICANN Consensus Policy”** and will be evaluated next month.

Yet ICANN Staff chose to impose the URS and unknown rights protection mechanisms on 10 million .ORG registrants via bilateral contractual negotiations—

- Overriding the GNSO's current policy development work as to .ORG;
- Dismissing public comments from EFF, the Noncommercial Stakeholders Group, and others raising serious substantive and procedural concerns; and
- Without studying or reflecting on the harms to the Multistakeholder Model or to .ORG registrants.

The Multistakeholder Model trumps efficiency

The Board's Proposed Determination posits: that “the Core Value of operating with efficiency” justified ICANN staff's decision to subject .ORG domains to new RPMs without regard for the Multistakeholder Model.

That cannot be true.

The Multistakeholder Model trumps efficiency

“The Commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities.”

“[I]n any situation where one Core Value must be balanced with another, potentially competing Core Value, the result of the balancing must serve a policy developed through the bottom-up multistakeholder process or otherwise best serve ICANN's Mission.”

--Bylaws Article 1, Section 1.2(c)

The Multistakeholder Model trumps efficiency

A Core Value cannot override a Commitment, let alone a pillar of ICANN's mission.

The Core Value of efficiency does not outweigh the Core Value of multistakeholder policy development.



If ICANN Staff can unilaterally yank policy matters from the GNSO and active policy development processes, the volunteers who make the Multistakeholder Model work may as well stop wasting their time.

Ground #2: The ICANN Board and Staff did not consider material information before the .ORG RA was executed.



During the .ORG RA renewal process, it was not public information that the Internet Society would soon announce a sale of PIR to private equity firm Ethos Capital.

The proposed sale invites additional scrutiny of terms that increase PIR's power over .ORG registrants.

EFF



The screenshot shows the top portion of a webpage. At the top left is the EFF logo, which consists of the letters 'EFF' in a bold, red, sans-serif font. To the right of the logo is a navigation menu with links for 'About', 'Issues', 'Our Work', 'Take Action', 'Tools', 'Donate', and a search icon. Below the navigation is the article title 'Nonprofit Community Stands Together to Protect .ORG' in a bold, black font. Underneath the title is the byline 'BY ELLIOT HARMON | NOVEMBER 22, 2019'. The main content area features a large graphic with a central light green circle containing the text '.org' in a dark grey font. This circle is surrounded by a sunburst pattern of colorful rays in shades of red, orange, yellow, and green. At the bottom of the screenshot, a small line of text reads 'EFF and 26 other organizations just sent a letter to the Internet Society (ISOC)'.

EFF ELECTRONIC FRONTIER FOUNDATION

About Issues Our Work Take Action Tools Donate Q

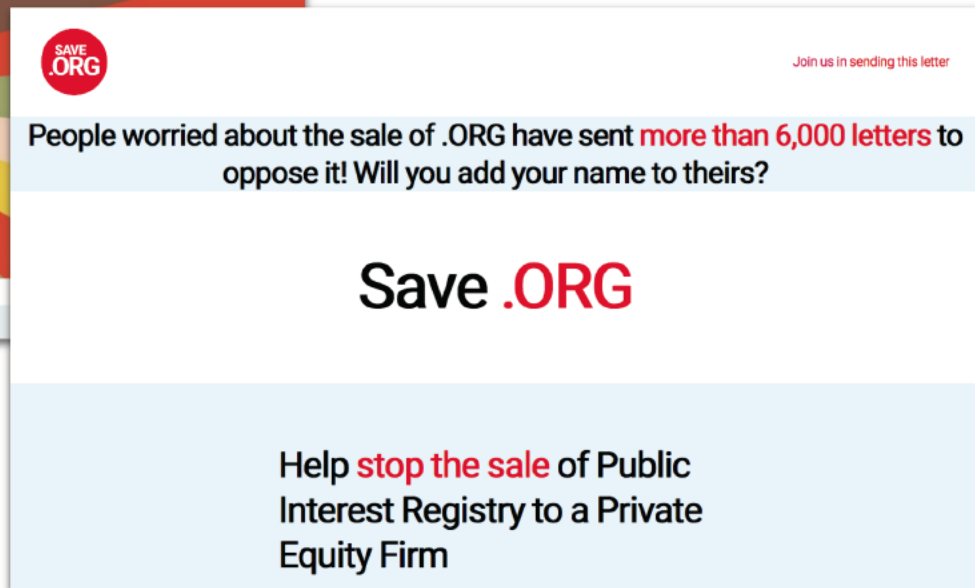
Nonprofit Community Stands Together to Protect .ORG

BY ELLIOT HARMON | NOVEMBER 22, 2019

EFF and 26 other organizations just sent a letter to the Internet Society (ISOC)

eff.org/dotorg

savedotorg.org



The screenshot shows a campaign page for 'Save .ORG'. At the top left is a red circular logo with the text 'SAVE .ORG' in white. To the right of the logo is the text 'Join us in sending this letter'. Below this is a light blue horizontal band containing the text 'People worried about the sale of .ORG have sent more than 6,000 letters to oppose it! Will you add your name to theirs?'. The main body of the page is white and features the text 'Save .ORG' in a large, bold font, where 'Save' is black and '.ORG' is red. At the bottom of the page is a light blue horizontal band containing the text 'Help stop the sale of Public Interest Registry to a Private Equity Firm', where 'stop the sale' is red and the rest is black.

SAVE .ORG

Join us in sending this letter

People worried about the sale of .ORG have sent more than 6,000 letters to oppose it! Will you add your name to theirs?

Save .ORG

Help stop the sale of Public Interest Registry to a Private Equity Firm



American Alliance of Museums
American Society of Association Executives
Aspiration
Association of Junior Leagues International
Creative Commons
Crisis Text Line
Demand Progress Education Fund
DoSomething.org
Electronic Frontier Foundation
European Climate Foundation
Free Software Foundation
Girl Scouts of the USA
Independent Sector
Internet Archive

Meals on Wheels America
National Council of Nonprofits
National Human Services Assembly
NTEN
Palante Technology Cooperative
Public Knowledge
R Street Institute
TechSoup
VolunteerMatch
Volunteers of America
Wikimedia Foundation
YMCA of the USA
YWCA USA



“The 2019 .ORG Registry Agreement represents a significant departure from .ORG’s 34-year history. It gives the registry the power to make several policy decisions that would be detrimental to the .ORG community:

[...]

“The power to develop and implement Rights Protection Mechanisms unilaterally, without consulting the .ORG community. If such mechanisms are not carefully crafted in collaboration with the NGO community, they risk censoring completely legal nonprofit activities.”



PIR's management of .ORG has always been predicated on ISOC's oversight.

In light of the pending sale of PIR, measures that give the registry more authority to drive policy unilaterally require close scrutiny.



“We’re proposing [to] set up a separate non-profit company called Public Interest Registry that will draw upon the resources of ISOC’s extended global network to drive policy and management. [...]

“We’re the foremost noncommercial organization focused on the Internet. We have a strong tradition and long tradition of working in the public interest [...]

“We have over 10,000 individual members [...] [and] over 137 organizational members, many noncommercial are included amongst them, spanning most of the noncommercial base. PIR policies will be derived from ISOC principles [...]

“We propose that the Public Interest Registry will be able to avail itself of the resources of the Internet Society, which provides an existing and globally extensive network of contacts with noncommercial Internet users. [...]

“We actually believe that we can provide [support for the .ORG community] through ISOC’s stable, responsible stewardship.”

- ISOC President and CEO Lynn St. Amour, June 26, 2002

What we are asking

- EFF asks that ICANN pursue an amendment to the .ORG Registry Agreement to eliminate the following clauses:
 - The second sentence of Section 2.8: “Registry Operator may, at its election, implement additional protections of the legal rights of third parties.”
 - Clause 2(b) of Specification 7: “the Uniform Rapid Suspension system (‘URS’) adopted by ICANN . . . including the implementation of determinations issued by URS examiners.”