



3 April 2020

Public Interest Registry
1775 Wiehle Avenue, Suite 100
Reston, VA 20190
Attention: Jon Nevett, President and CEO

RE: Request for Additional Information/ Questions re: Public Interest Commitments

Dear Jon:

In letters dated 20 December 2019 and 4 March 2020, Public Interest Registry ("PIR") responded to ICANN's request for certain additional information related to PIR's "Notice for an Indirect Change of Control and Entity Conversion" resulting from the proposed acquisition of PIR (the "Transaction"). In addition, in an e-mail dated 16 March 2020, PIR shared its revised proposed Public Interest Commitments ("PICs").

Thank you for the information provided and PIR's continued desire to act in the spirit of cooperation so that ICANN has a full understanding of the Transaction.

ICANN has additional requests and/or questions related to PIR's responses. Please see Attachment A. I would like to stress that the information requested is necessary for ICANN to complete its diligence in connection with the Transaction. Please answer every question individually and if the answer to a question is "none", please state that. Prior to 20 April 2020, ICANN org and Board need to understand if any questions remain unanswered so that we can consider the materiality of that issue to the totality of ICANN's decision.

In addition, ICANN has a number of clarifying questions in relation to the proposed PICs. Answers to these questions will help us evaluate the PICs and their enforceability. ICANN is concerned about being put in a position to enforce provisions of the PICs that are unclear and accordingly less clear than other provisions of our agreements. Please see Attachment B. Again, please answer the questions individually.

If based upon your review of our questions, you believe that you could provide any clarifications to your PICs, please try to do so, if at all possible, quickly. We would like to post your PICs for a public notice period, consistent with other PIC's that have been incorporated in registry operator agreements. Ideally, we would be in a position to post any revised PICs before the end of the day, on 7 April 2020.

ICANN will publish this letter with Attachments on 6 April 2020. If you believe that anything in this additional request is confidential, please let us know before 2:00pm PST, and if there are redactions, provide us with a redacted version of the Attachments for publication.

Respectfully,



John Jeffrey
General Counsel and Secretary

Cc: Brian Cimboric, Vice President and General Counsel, PIR
Theresa Swinehart, Senior Vice President, Multistakeholder Strategy & Strategic Initiatives,
ICANN
Russ Weinstein, Senior Director, gTLD Accounts & Services, ICANN

ATTACHMENT A

PROPOSED OWNERSHIP STRUCTURE AND INDIVIDUALS

1. “Controlling” Parties – ICANN has previously requested information regarding the entities that will “control” PIR upon consummation of the proposed transaction. ICANN has specifically requested that PIR provide the entities and individuals that will “control” PIR post-transaction as that is defined in PIR’s registry agreements. PIR has provided some information regarding share ownership but has not provided the specific information regarding “control”. Please provide this information, or confirm that “control” is limited to Purpose Domains Feeder I, LP (“Feeder”), Ethos Purpose GP, LLC (as general partner of Feeder), Ethos Capital, LLC., and Erik Brooks (as sole owner and manager of Ethos Group GP, LLC and Ethos Capital LLC).
2. “Affiliates” – ICANN has previously requested information regarding the “Affiliates” of the “controlling entities”, as the term “Affiliate” is defined in PIR’s registry agreements. PIR has not provided this information. Please provide this information for all “controlling entities” or confirm that the “controlling entities” have no Affiliates (other than the entities set forth in the “Purpose Domains Control Structure Chart (Post-Closing)” previously provided to ICANN and Erik Brooks).
3. Directors/Officers – Please provide the names of the directors/officers of all “controlling entities” and if there are no directors/officers of a particular entity, then please provide that information. Please include a statement as to whether Purpose Domains Feeder, LLC, Ethos Purpose GP, LLC and Ethos Capital, LLC have a Board of Managers or similar structure. If yes, please include the members of these Boards in the answer to this request.
4. In ICANN’s original information request (Question 5), ICANN requested that certain questions be answered for entities and individuals listed in the post-transaction chart (which was to include all “controlling entities” and affiliates). Please confirm that limited responses provided in PIR’s 20 December 2019 response pertain to each entity and individual set forth in the “Purpose Domains Control Structure Chart (Post-Closing)” provided in Attachment 3, including the minority investors. Please supplement the information to answer the list of questions for the all “controlling entities” and their directors/officers.

TRANSACTION DOCUMENTS AND INFORMATION

5. PIR states that “Because PIR will be profitable from a cash perspective as described above, PIR will be fully capable of servicing the financial obligations (including the repayment obligations under the credit facility).” Can you please provide more detail on PIR’s current plans with respect to the repayment of the \$360m term loan at the maturity date in light of Ethos Capital’s ten plus investment horizon for PIR? Is it anticipated that the loan will be

repaid through the operating cash flow of PIR and, if so, please provide documentation supporting such projected cash flow at the time of maturity of the loan? Is it Ethos Capital's intent that the loan will be repaid through a refinancing of the debt at maturity and, if so, please provide documentation supporting projected cash flow to repay any replacement debt at its maturity? Please also see request # 12.

6. Please provide the LLC Agreements and Partnership Agreements of the entities below Ethos Purpose GP, LLC in the "Purpose Domain Control Structure Chart (Post-Closing)". Review of these documents will provide necessary information for ICANN to complete its review of the proposed transaction.
7. Regarding capital distributions, PIR states that the "Ethos investors" will be eligible to receive capital distributions if any are made, but does not discuss Ethos Capital's intention as it relates to distributions. Is there a current intention to provide such capital distributions (including through a dividend recapitalization) to any entity or person, particularly prior to the repayment of the debt incurred in connection with the transaction? Please also confirm that, for purposes of your response, that "Ethos Investors" is referring to Mr. Brooks, Ethos Capital, LLC and the minority investors identified to ICANN in your response dated 4 March 2020.
8. PIR states that capital distributions are limited in several ways, but provides little detail on those limitations. Please specifically describe these limitations or restrictions, including any limitations imposed under: (a) state law, (b) credit facilities, (c) under PIR's organizational documents or (d) any other arrangements or agreements which limit or restrict PIR's ability to make capital distributions.
9. PIR states that "PIR and its direct and indirect parents are under no obligation to return capital to investors during the investment period." Please provide detail on this statement. What is the duration of the investment period? Are the referenced "investors" the minority investors identified in PIR's response dated 4 March 2020, as well as Ethos Capital, LLC and Erik Brooks?
10. PIR states that "PIR's financial situation following the Transaction will be highly stable". This statement is not verifiable as part of ICANN's due diligence review of the proposed transaction without PIR and Ethos Capital providing the financial information requested by ICANN. Please see request #12.
11. In ICANN's previous request for additional information, we asked that PIR provide the exhibits to the letter sent to the Pennsylvania AG by PIR's counsel (which were not otherwise provided). In the alternative, we asked for a justification for not providing these exhibits. This request was not addressed nor were the exhibits provided. Please answer.

FINANCIAL AND TAX QUESTIONS

12. PIR has not provided the requested post-transaction financial information that has been previously requested. Without this information, ICANN cannot assess the financial condition of PIR LLC post-transaction, which is an important element of ICANN's review. Accordingly, please provide projected pro-forma financial statements, including cash flow statements, for PIR LLC for each of the calendar years ended 31 December 2020 through 2025, presuming that the \$360-million loan maturity would occur by 31 December 2025. If PIR's fiscal year ends on a date other than 31 December, please provide such financial information as of the end of such fiscal years (beginning with the fiscal year ending in 2020). Any financial expense, of any nature, whether debt and/or equity service or otherwise, should be separately displayed. Any tax expense (or benefit) should also be separately displayed.

THE .ORG COMMUNITY

13. The Stewardship Council:

- What is the role of public comment or other community input on the role of the Stewardship Council, its members and its decisions?
- Will Council members be compensated or have expenses reimbursed? Will there be a conflict of interest policy for members?
- Has PIR or Ethos (or their representatives or agents) approached anyone to date to be a member of the Stewardship Council?

14. Conversion to LLC/Public Benefit Corporation Status:

- Can you tell us what steps you have taken and any information that you have gained about the conversion of the non-profit?
- In the event ICANN's decision were to be conditioned on the change of control not being effectuated until approval of the transaction and/or entity conversion by the Pennsylvania court and other relevant PA authorities, could PIR provide specific language that would be appropriate under PA law for this condition?
- Please confirm whether post-closing PIR, LLC will be organized under Pennsylvania law as a public benefit corporation. If so, what public benefit commitments will be included in the organizational documents?

15. Transparency Principles:

- Please provide detail on the "adoption of transparency principles" mentioned in previous information provided by PIR. Include any documentation where these principles can be found, including information on who holds the authority to uphold these principles.

16. Differentiation of .org from TLDs intended for commercial purposes:

- PIR has stated in past information that the proposed transaction represents a commitment to differentiation of the .org TLD. Please provide more detail on that statement.
- In addition, please provide details on any commitments intended to differentiate the .org TLD. Please provide documentation where these commitments are or may be set forth.

17. Responsiveness to the needs of the non-commercial community:

- Please provide more information on “mechanisms” mentioned in your previous responses for promoting the registries in a manner that is responsive to the needs of the community and more information on the “announced investment” by Ethos Capital mentioned in the responses. Please provide any documentation to support these commitments and any future investments, including information on who holds the authority to uphold these commitments.
- How will the input of the community be taken into consideration in regards to these mechanisms?

DOCUMENTATION/FILINGS WITH PENNSYLVANIA AUTHORITIES

Please provide copies of any additional filings with Pennsylvania authorities (including the PA Secretary of State, PA Dept of State, PA Attorney General and the PA Court of Common Pleas) and any responses or decisions issued from such authorities as such filings or responses/decisions are issued.

ATTESTATION OF FULL AND TRUTHFUL DISCLOSURE

Please provide an attestation of full and truthful disclosure in the same manner as provided in the initial submission with respect to all additional information provided.

ATTACHMENT B
Clarifying Questions on Proposed PICs

Affordability

1. Several readers have found the pricing formula to be confusing. Why was the formula in the proposed PIC chosen and not the formula from the previous .org registry agreement? Is there a way to clarify the commitments made under this proposed PIC?
2. For clarity on the proposed formula to be enforced through the PIC, could PIR include a chart listing the possible Applicable Maximum Fee for each year?
3. For clarity, does the Applicable Maximum Fee apply to any and all domain names, including those that could be considered “premium”?
4. Why is the PIC commitment only for 8 years and not the length of the registry agreement?
5. We notice that no changes were made to the proposed Affordability PIC after the close of the .org community input period. Was community input received on this PIC and how was it addressed?

Stewardship Council

6. When will the Stewardship Council be operative?
7. We note in the proposed PIC that the Stewardship Council has veto rights over “modifications” to “designated policies”. What are the current policies related to these two designated areas over which the Council would have modification veto rights? Can you provide more detail on what policies would be considered “designated” and how many policies PIR believes will fall into the designated areas? Is any change to these policies sent to the Stewardship Council for consideration? What is the Stewardship Council’s role with respect to establishing these policies at the start or initiating new policy development? What role, if any, would the Stewardship Council have with respect to PIR’s application and enforcement of these policies?
8. In regard to enforceability of this proposed PIC, would PIR consider including a notification obligation to ICANN when a modification is presented to the Council, what the proposed modification entails and whether the Council approved or vetoed?
9. Will the Stewardship Council be kept apprised of PIR’s enforcement of “designated policies” and, if so, how? What do you see as ICANN’s role in the event of a dispute between the Stewardship Council and PIR with respect to whether PIR’s interpretation of a “designated policy” in any particular instance amounts to a modification of that policy?

10. Why were the “designated policies” chosen as the ones over which the Council would have veto authority? What was the criteria used to scope the authority of the Stewardship Council in relation to the policies of .org? Was .org community input received on which policies to give the Council veto authority over and how was that input addressed?
11. How was the 2/3 vote criteria (versus a majority vote criteria) chosen for the Council’s ability to veto (i) a designated policy modification and (ii) modifications to the charter which would diminish the Council’s authority?
12. The proposed PIC provides that “no employee, director or member” of PIR will serve on the Stewardship Council. The PIC also provides that the Council will provide “independent” advice. How else will PIR ensure that the members of the Council are “independent”? For instance, would PIR consider also providing that family members, officers, affiliates and shareholders should also not serve on the Council? Will the Council have a Conflict of Interest policy? In regard to enforceability of this PIC, will PIR provide ICANN and the .org community with the names and affiliations of all members proposed for the Council and a copy of any conflict of interest policy?
13. The proposed PIC states that “PIR reserves the right to ensure compliance in its sole judgment with applicable laws, policies and regulations”. What “policies” are intended to be applicable? Is it intended to be “ICANN policies” as stated in the revised charter?
14. We note that the proposed PIC does not include a number of the features of the role and rights of the Stewardship Council which are contained in the charter. Why is that? We also note that the proposed PIC does not address the Council’s role with respect to the “Statement of Public Benefit”, Fund Value Statement and the Proposed Fund Appropriations (each included in the charter). How is PIR documenting its commitment to the Council’s role, rights, and authority?
15. How will .org community input be solicited and incorporated in the work of the Council? How is PIR documenting its commitment to .org community input being solicited and considered and by whom will that be enforceable?
16. Does the Council have the right to request and obtain documentation or other information necessary for it to carry out its duties?

Community Enablement Fund

17. We note the proposed PIC to establish this Fund but no commitment to the amount of funds to support the initiatives of this Fund. Wouldn’t a funding commitment over the

term of the registry agreement be necessary in order to make it meaningful and enforceable as a commitment to the community?

18. Was there community input on the threshold initiatives that should be supported by this Fund? If so, how was it addressed?

Annual Public Report

19. We note the proposed PIC for an annual report but there is no detail on what would be provided in this report. Can greater detail on what the report would include be provided in the PIC? In addition, as noted above, for the proposed Fund PIC to be meaningfully enforceable, a funding commitment is necessary and that should include transparent reporting of the funding provided and how the funding is spent.

Revisions to PICs

20. Does the reference to “ICANN’s applicable public comment process” refer to the current public comment process for Registry Agreement amendments?

Enforceability

21. For all of the areas discussed within these Clarifying Questions, what does PIR perceive to be enforceable by ICANN through the PIC? Please identify what PIR understands as the scope and limitations of ICANN’s PIC enforcement power.

Other Questions

22. These proposed PICs seem only to be applicable to .org. Or are they also proposed with respect to PIR’s other TLDs?
23. Based on our review of public dialogue and our discussions, several other matters have been raised. Would you consider adding provisions in the proposed PICs related to (i) an obligation to conduct a “public interest impact assessment” for new products and services to ensure no harm to non-commercial organizations and to share these assessment reports publicly in an annual transparency report, (ii) empowering the Stewardship Council to have authority with respect to not only vetoing changes to free speech policies but also reviewing the interpretation and execution of decisions made under these policies that affect free speech, and (iii) inclusion of a separate transparency report (along with the annual public report) which would include the assessment reports (noted above) as well as the number of takedown notices PIR has received from governments, private entities or individuals and the actions taken.