Petillion

Annex 1

Namecheap contact information

NameCheap, Inc.
4600 East Washington Street
Suite 33
Phoenix AZ 85034
United States
+1 3234480232

These IRP proceedings are followed up internally at Namecheap by:

- Mr. Owen Smigelski, Contact Information Redacted

All notifications in these IRP proceedings can be made to Namecheap's counsel:

- Mr. Flip Petillion, fpetillion@petillion.law
- Mr. Jan Janssen, jjanssen@petillion law.

InterNIC

Home Registrars FAQ Whois FAQ

The Accredited Registrar Directory:

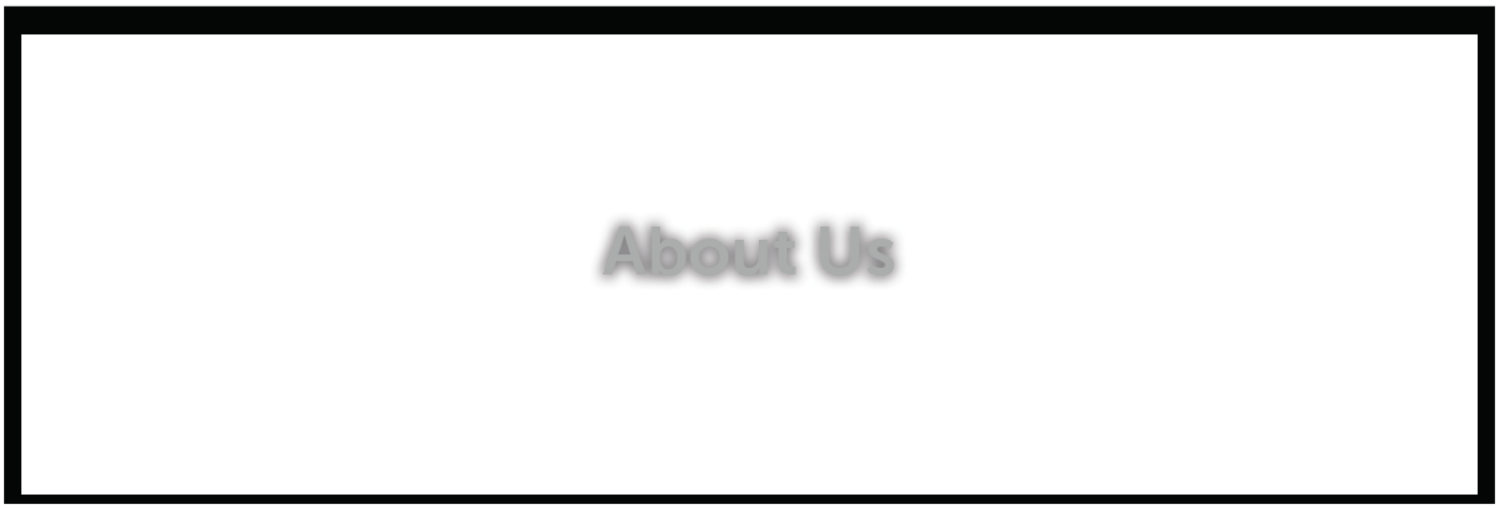
The information that appears for each registrar, including the referral web address and contact information, has been provided by each individual registrar.

Registrar Contact Information

NameCheap, Inc.
4600 East Washington Street
Suite 33
Phoenix AZ 85034
United States
+1 3234480232
support@namecheap.com

This page last updated on Monday, 24-February-2020

namecheap



History & Overview

Namecheap is an ICANN-accredited domain registrar and technology company founded in 2000 by CEO Richard Kirkendall. It is one of the fastest-growing American companies according to the 2018 Inc. 5000. Celebrating nearly two decades of providing unparalleled levels of service, security, and support, Namecheap has been steadfast in customer satisfaction. With over 10 million domains under management, Namecheap is among the top domain registrars and web hosting providers in the world.

We offer a full selection of popular and unique domains, along with fully featured hosting packages, SSL security certificates, WhoisGuard privacy protection, and more–all at some of the lowest prices in the industry.

People Are The Reason

The Internet is built on computers and servers, but there's no net without people–people like you and people like us. In today's global market, having an online presence isn't just a nice thing to have, it's a necessity. We at Namecheap think it's a basic right.

That's why we've made it our mission to provide affordable access to domains, along with the products and services that can help you make your mark online.

The Internet isn't just for people who write code or build server hardware. It's for you and your ideas, big and small. We look forward to helping you get those ideas online and out to the world.

The Namecheap Mission

Namecheap offers the latest in high-quality domain and hosting products at the most competitive prices in the business. We work every day to provide unparalleled levels of service, security, and support. We won't bother you with unwanted upselling or aggressive advertising. Our goal is to be honest, straightforward, friendly, and helpful. It's that simple.

Learn More →

About

Mission & Values

Causes

Our Team

Guarantee

Testimonials

Privacy Commitment

Newsstand

Press Releases

Customer Stories

Need help?

We're always here for you.

Chat with a Live Person

namecheap

We make registering, hosting, and managing domains for yourself or others easy and affordable, because the internet needs people.

Learn more about Namecheap →

Read our blog →

Join Our Newsletter & Marketing Communication

We'll send you news and offers.

you@yours.com

Join

Terms and Conditions Privacy Policy UDRP

WE SUPPORT

We are an ICANN accredited registrar.
Serving customers since 2001.

Payment Options

Namecheap

An ICANN-accredited domain name registrar, web hosting and technology company with 10 million domains under management.

2018 Inc. 5000 Rank: # 4308

Leadership: Richard Kirkendall

Industry: Software

Location: Phoenix , AZ

Founded: 2000

Employees: 950

Share:

PREVIOUS INC. 5000 RANKINGS

2016	#2944

MORE COMPANY INFORMATION

Twitter: @namecheap

Website: namecheap.com

CHANNELS

STARTUP
GROW
LEAD
INNOVATE
TECHNOLOGY
MONEY
INC. 5000
VIDEO

MORE INC.

EVENTS
NEWSLETTERS
MAGAZINE
BRANDVIEW
PODCASTS
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MAGAZINE
DIGITAL EDITION

FOLLOW INC.

Inc.

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Annex 2

Proposed Renewal of .org Registry Agreement

Open Date
18 Mar 2019 23:59 UTC

✔ Comments Closed

Close Date
29 Apr 2019 23:59 UTC

✔ Report of Public Comments (https://www.icann.org/en/system/files/files/report-comments-org-renewal-03jun19-en.pdf)

Staff Report Due
3 Jun 2019 23:59 UTC

✔

Follow Updates (/users/sign_up?document_id=13925&following=true)

View Comments (https://mm.icann.org/pipermail/comments-org-renewal-18mar19)

Originating Organization

Global Domains Division

Staff Contact

Russ Weinstein
globalsupport@icann org (mailto:globalsupport@icann.org)

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Brief Overview

Purpose: The purpose of this public comment proceeding is to obtain community input on the proposed .org renewal agreement (herein referred to as ".org renewal agreement"). This renewal proposal is the result of discussions between ICANN (Internet Corporation for Assigned Names and Numbers) and Public Interest Registry, a Pennsylvania non-profit corporation – the Registry Operator for the .org top-level domain (TLD (Top Level Domain)).

Current Status: The current .org Registry Agreement (herein referred to as "current .org agreement") will expire on 30 June 2019. Section 4.2 of the current .org agreement provides that it shall be renewed upon the expiration of the initial term set forth in Section 4.1.

Next Steps: Following review of the public comments received, ICANN (Internet Corporation for Assigned Names and Numbers) will prepare and publish a summary and analysis of the comments received. The report will be available for the ICANN (Internet Corporation for Assigned

Names and Numbers) Board in its consideration of the proposed .org renewal agreement.

Report of Public Comments (https://www.icann.org/en/system/files/files/report-comments-org-renewal-03jun19-en.pdf)

Section I: Description and Explanation

The .org renewal agreement is based on the base generic top level domain (gTLD (generic Top Level Domain)) Registry Agreement (https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.html) updated on 31 July 2017 (herein referred to as "base registry agreement"). However, in order to account for the specific nature of the .org TLD (Top Level Domain), relevant provisions in the current .org agreement (/resources/agreement/org-2013-08-22-en) have been carried over to the .org renewal agreement.

As a result, the .org renewal agreement is substantially similar to the terms of the base registry agreement. Listed below are summaries of both a) provisions in the renewal agreement that are materially different from the current .org agreement, and b) material differences between the .org renewal agreement and the base registry agreement.

a. **Provisions in the proposed .org renewal agreement that are materially different from the current .org agreement:**
   - **Approved Services (Exhibit A):** Consistent with all new gTLDs and other "legacy" TLD (Top Level Domain) registry agreement renewals, Exhibit A has been modified to include the following additional or modified approved services: Anti-Abuse, Searchable Whois, Internationalized Domain Names (IDNs (Internationalized Domain Names)), .org Single and Two-Character Phased Allocation Program, Bulk Transfer After Partial Portfolio Acquisition (BTAPPA), Registry Lock, and an

implementation period of 270 calendar days to transition all systems to the requirements of the .org renewal agreement, which is consistent with other legacy TLD (Top Level Domain) registry agreement renewals.

- **Protection of Legal Rights of Third Parties and Minimum Requirements for Rights Protection Mechanisms (Section 2.8 and Specification 7 of the .org renewal agreement):** To better conform with the base registry agreement, the .org renewal agreement will be subject to the Rights Protection Mechanisms (RPMs) set forth in section 2 of Specification 7, including the Uniform Rapid Suspension (URS (Uniform Rapid Suspension)) system, the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP (Post-Delegation Dispute Resolution Procedure)), and the Registration Restrictions Dispute Resolution Procedure (RRDRP (Registration Restrictions Dispute Resolution Procedure)). Public Interest Registry is also authorized to develop additional rights protection mechanisms. Section 2.8 of the .org renewal agreement also does not contemplate processes and procedures for launch of the TLD (Top Level Domain) as is consistent with other legacy TLD (Top Level Domain) registry agreement renewals.

- **Public Interest Commitments (Section 2.17 and Specification 11 of the .org renewal agreement):** The Registry Operator has adopted the public interest commitments and applicability of the Public Interest Commitment Dispute Resolution Process (PICDRP (Public Interest Commitment Dispute Resolution Procedure)) comparable to new gTLD (generic Top Level Domain) operators (with the exception of Specification 11 Section 2, which refers to the initial application for the gTLD

(generic Top Level Domain)).

- **Pricing for Domain Name (Domain Name) Registrations and Registry Services (Section 2.10 of the .org renewal agreement):** In alignment with the base registry agreement, the price cap provisions in the current .org agreement, which limited the price of registrations and allowable price increases for registrations, are removed from the .org renewal agreement. Protections for existing registrants will remain in place, in line with the base registry agreement. This change will not only allow the .org renewal agreement to better conform with the base registry agreement, but also takes into consideration the maturation of the domain name market and the goal of treating the Registry Operator equitably with registry operators of new gTLDs and other legacy gTLDs utilizing the base registry agreement

- **Fees to be paid to ICANN (Internet Corporation for Assigned Names and Numbers) org (Section 6.1 of the .org renewal agreement):** The .org renewal agreement has been modified to match the fee provisions in the base registry agreement. Accordingly, the registry fixed fee of $6,250 per calendar quarter is proposed for the .org TLD (Top Level Domain) beginning on the .org renewal agreement effective date. The registry-level transaction fee remains at $0.25 for each annual increment of an initial or renewal domain name registration.

- **Misc. Provisions:** Various other provisions have been modified, at the request of the Registry Operator and after bilateral negotiations with Registry Operator, to align with terms previously included in the current .org agreement.

b. Material differences between the proposed renewal agreement for .org and the base gTLD (generic Top Level Domain) Registry Agreement:

- **Registry Interoperability and Continuity (Section 2.7 and Specification 6 of the base registry agreement):** Section 6 of Specification 6 of the base gTLD (generic Top Level Domain) registry agreement (Name Collision Occurrence Management) will not apply to the .org TLD (Top Level Domain) as it has been in operation since 1985. This is consistent with other legacy TLD (Top Level Domain) registry agreement renewals.

- **Emergency Transition (Section 2.13 and 2.14 of the .org renewal agreement) and Continued Operations Instrument (Section 2.12 and Specification 8 of the base registry agreement):** In alignment with the base registry agreement, the .org renewal agreement will continue to incorporate the registrant protection provision allowing ICANN (Internet Corporation for Assigned Names and Numbers) to designate an emergency interim registry operator if emergency thresholds for registry functions are reached. However, the Continued Operations Instrument requirement will not apply to the .org TLD (Top Level Domain) as it has been in continuous operation since 1985. As a result, Section 4.3(c) of the base registry agreement (Termination by ICANN (Internet Corporation for Assigned Names and Numbers)) is not applicable to the .org TLD (Top Level Domain) and, therefore, is of no force or effect. This is consistent with other legacy TLDs who have adopted the Emergency Transition provisions.

- **Pass Through Fees related to the Trademark Clearinghouse (Section 6.4 of the base registry agreement):** This requirement will not apply to the .org TLD (Top Level Domain) as it

has been in continuous operation since 1985. As a result, Section 6.4 of the base registry agreement is not applicable to the .org TLD (Top Level Domain) and, therefore, is of no force of effect. This is consistent with other legacy TLD (Top Level Domain) registry agreement renewals.

- **Schedule of Reserved Names (Specification 5 of the base registry agreement)**: The .org renewal agreement amends Section 2 of Specification 5 (Two-Character ASCII Labels) allowing the Registry Operator to allocate two-character labels that were reserved in prior registry agreements. The allocation of two-character labels is subject to the Registration Policy and Post Registrations Complaint Investigation provisions in Appendix A of the Authorization for Release of Letter/Letter Two-Character ASCII Labels at The Second Level issued to all new gTLD (generic Top Level Domain) registry operators on 13 December 2016. Additionally, the provision on the Registry Operator's use of up to 100 names for the operation and promotion of the TLD (Top Level Domain) (Section 3.2) and the provisions on activation of names relating to International Olympic Committee, International Red Cross and Red Crescent Movement (Section 5) and names relating to Intergovernmental Organizations Section 6) are of no force or effect in the .org renewal agreement.

- **Misc. Provisions:** Various other provisions have been modified to remove references to the initial delegation of the TLD (Top Level Domain), entry into the root zone, statements made in the registry TLD (Top Level Domain) application, and launch of the TLD (Top Level Domain), as they are not applicable to a legacy TLD (Top Level Domain).

Posted for public comment are both clean and "redline" versions of the .org renewal agreement, and the Addendum to the .org renewal agreement that is proposed to be executed by the parties as follows:

- Proposed .org renewal agreement (/sites/default/files/tlds/org/org-proposed-renewal-18mar19-en.pdf)
- Redline showing changes compared to the base registry agreement (/sites/default/files/tlds/org/org-proposed-renewal-redline-18mar19-en.pdf)
- Proposed addendum to the .org renewal agreement (/sites/default/files/tlds/org/org-proposed-addendum-18mar19-en.pdf)

Contractual Compliance Review: As part of the renewal process, ICANN (Internet Corporation for Assigned Names and Numbers) conducted a contractual compliance review of the current .org agreement. Public Interest Registry was found to be in compliance with its contractual requirements for the operation of the .org TLD (Top Level Domain).

Section II: Background

ICANN (Internet Corporation for Assigned Names and Numbers) and Public Interest Registry, a Pennsylvania non-profit corporation, entered into a TLD (Top Level Domain) Registry Agreement on 2 December 2002 (/resources/unthemed-pages/index-2002-12-02-en) for continued operation of the .org top level domain, which was subsequently renewed on 8 December 2006 (/resources/unthemed-pages/index-c1-2012-02-25-en) and 22 August 2013 (/resources/agreement/org-2013-08-22-en).

In addition to the .org renewal agreement, the registry agreements of several "legacy" gTLDs, namely, .tel, .mobi, .jobs, .travel, .cat and .pro have been renewed based on the base registry agreement as a result of bilateral negotiations between ICANN (Internet Corporation for Assigned Names

and Numbers) and the applicable registry operators. These renewed agreements can be viewed at: https://www.icann.org/resources/pages/registries/registries-agreements-en (/resources/pages/registries/registries-agreements-en).

Section III: Relevant Resources

- Current .org Registry Agreement and Appendices (/resources/agreement/org-2013-08-22-en)
- Approved base New gTLD (generic Top Level Domain) Registry Agreement (as updated on 31 July 2017) (https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-global-amendment-31jul17-en.html)

Section IV: Additional Information

Section V: Reports

- Report (https://www.icann.org/en/system/files/files/report-comments-org-renewal-03jun19-en.pdf)

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Annex 3

Proposed Renewal of .info Registry Agreement

Open Date
18 Mar 2019 23:59 UTC

Close Date
29 Apr 2019 23:59 UTC

Staff Report Due
3 Jun 2019 23:59 UTC

✔ Comments Closed

✔ Report of Public Comments (https://www.icann.org/en/system/files/files/report-comments-info-renewal-03jun19-en.pdf)

✔

Follow Updates (/users/sign_up?document_id=13923&following=true)

View Comments (https://mm.icann.org/pipermail/comments-info-renewal-18mar19)

Originating Organization

Global Domains Division

Staff Contact

Russ Weinstein
globalsupport@icann.org (mailto:globalsupport@icann.org)

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Brief Overview

Purpose: The purpose of this public comment proceeding is to obtain community input on the proposed .info renewal agreement (herein referred to as ".info renewal agreement"). This renewal proposal is a result of discussions between ICANN (Internet Corporation for Assigned Names and Numbers) and Afilias Limited, the registry operator for the .info top-level domain (TLD (Top Level Domain)).

Current Status: The current .info Registry Agreement (herein referred to as current .info agreement) will expire on 30 June 2019. Section 4.2 of the current .info agreement provides that it shall be renewed upon the expiration of the initial term set forth in Section 4.1.

Next Steps: Following review of the public comments received, ICANN (Internet Corporation for Assigned Names and Numbers) org will prepare and publish a summary and analysis of the comments. The report will be available for the

ICANN (Internet Corporation for Assigned Names and Numbers) Board in its consideration of the proposed .info renewal agreement.

Report of Public Comments (https://www.icann.org/en/system/files/files/report-comments-info-renewal-03jun19-en.pdf)

Section I: Description and Explanation

The proposed renewal agreement for the .info TLD (Top Level Domain) is based on the base generic top level domain (gTLD (generic Top Level Domain)) Registry Agreement (https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.html) (herein referred to as base registry agreement) updated on 31 July 2017. However, in order to account for the specific nature of the .info TLD (Top Level Domain), relevant provisions in the current .info agreement (/resources/agreement/info-2013-08-22-en) have been carried over to the .info renewal agreement.

As a result, the proposed .info renewal agreement is substantially similar to the terms of the base registry agreement. Listed below are summaries of both a) provisions in the proposed .info renewal agreement that are materially different from the current .info agreement, and b) material differences between the .info renewal agreement and the base registry agreement.

a. **Provisions in the proposed .info renewal agreement that are materially different from the current .info agreement:**
   - **Approved Services (Exhibit A):** Consistent with all new gTLDs and other legacy TLD (Top Level Domain) registry agreement renewals, Exhibit A has been updated to include the following additional or modified approved services: Anti-Abuse, Registry Lock, Bulk Transfer After Partial Portfolio Acquisition

(BTAPPA), Whois Contact Lookup, Internationalized Domain Names (IDNs (Internationalized Domain Names)), Registration Validation per Applicable Law, and an implementation period of 270 calendar days to transition all systems to the requirements of the .info renewal agreement.

- **Protection of Legal Rights of Third Parties and Minimum Requirements for Rights Protection Mechanisms (Section 2.8 and Specification 7 of the .info renewal agreement):** To better conform with the base registry agreement, the .info renewal agreement will be subject to the Rights Protection Mechanisms (RPMs) set forth in Section 2 of Specification 7, including the Uniform Rapid Suspension (URS (Uniform Rapid Suspension)) system, the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP (Post-Delegation Dispute Resolution Procedure)) and the Registration Restrictions Dispute Resolution Procedure (RRDRP (Registration Restrictions Dispute Resolution Procedure)). Afilias Limited is also authorized to develop additional rights protection mechanisms. Section 2.8 of the .info renewal agreement also does not contemplate processes and procedures for launch of the TLD (Top Level Domain), as is consistent with other legacy TLD (Top Level Domain) Registry Agreement renewals.

- **Public Interest Commitments (Section 2.17 and Specification 11 of the .info renewal agreement):** The Registry Operator has adopted the public interest commitments and applicability of the Public Interest Commitment Dispute Resolution Process (PICDRP (Public Interest Commitment Dispute Resolution Procedure)) comparable to other new gTLD (generic Top Level Domain) Operators (except Specification 11, Section 2, which refers to the

initial application for the gTLD (generic Top Level Domain)).

- **Fees to be paid to ICANN (Internet Corporation for Assigned Names and Numbers) org (Section 6.1 of the .info renewal agreement):** The .info renewal agreement has been modified to match the fee provisions in the base registry agreement. Accordingly, the registry fixed fee of $6,250 per calendar quarter is proposed for the .info TLD (Top Level Domain), beginning on the effective date of the renewal agreement. The registry-level transaction fee remains at $0.25 for each annual increment of an initial or renewal domain name registration.

- **Registry Code of Conduct (Section 2.14 and Specification 9 of the .info renewal agreement):** The Registry Operator has adopted the code of conduct in conformity with the base registry agreement.

- **Pricing for Domain Name (Domain Name) Registrations and Registry Services (Section 2.10 of the .info renewal agreement):** In alignment with the base registry agreement, the price cap provisions in the current .info agreement, which limited the price of registrations and allowable price increases for registrations, are removed from the .info renewal agreement. Protections for existing registrants will remain in place in line with the base registry agreement. This change will not only allow the .info renewal agreement to better conform with the base registry agreement, but also takes into consideration the maturation of the domain name market and the goal of treating the Registry Operator equitably with operators of new gTLDs and other legacy gTLDs utilizing the base registry agreement.

- **Misc. Provisions:** Various other provisions have been modified, at the request of the Registry Operator and after bilateral negotiations with Registry Operator, to align with terms previously included in the current .info agreement.

b. **Material differences between the proposed renewal agreement for .info and the base gTLD (generic Top Level Domain) Registry Agreement:**

- **Registry Interoperability and Continuity (Section 2.7 and Specification 6 of the base registry agreement):** Section 6 of Specification 6 of the base registry agreement (Name Collision Occurrence Management) will not apply to the .info TLD (Top Level Domain) as it has been in operation since 2001. This is consistent with other legacy TLD (Top Level Domain) registry agreement renewals.

- **Emergency Transition (Section 2.13 and 2.14 of the .info renewal agreement) and Continued Operations Instrument (Section 2.12 and Specification 8 of the base registry agreement):** In alignment with the base registry agreement, the .info renewal agreement will continue to incorporate the registrant protection provision allowing ICANN (Internet Corporation for Assigned Names and Numbers) org to designate an emergency interim registry operator if emergency thresholds for registry functions are reached. However, the Continued Operations Instrument requirement will not apply to the .info TLD (Top Level Domain) as it has been in continuous operation since 2001. As a result, Section 4.3(c) of the base registry agreement (Termination by ICANN (Internet Corporation for Assigned Names and Numbers)) is not applicable to the .info TLD (Top Level Domain) and, therefore, is of no force or effect. This is consistent with other legacy TLDs who have adopted the Emergency

Transition provisions.

- **Pass Through Fees related to the Trademark Clearinghouse (Section 6.4 of the base registry agreement):** This requirement will not apply to the .info TLD (Top Level Domain) as it has been in continuous operation since 2001. As a result, Section 6.4 of the base registry agreement is not applicable to the .info TLD (Top Level Domain) and, therefore, is of no force or effect. This is consistent with other legacy TLD (Top Level Domain) registry agreement renewals.

- **Schedule of Reserved Names (Specification 5 of the base registry agreement)**: The .info renewal agreement amends Section 2 of Specification 5 (Two-Character ASCII Labels) allowing the Registry Operator to allocate two-character labels that were reserved in prior registry agreements. The allocation of two-character labels is subject to the Registration Policy and Post Registrations Complaint Investigation provisions to avoid confusion with corresponding country codes, as stated in Appendix A of the Authorization for Release of Letter/Letter Two-Character ASCII Labels at The Second Level issued to all new gTLD (generic Top Level Domain) registry operators on 13 December 2016. Additionally, the provision on the Registry Operator's use of up to 100 names for the operation and promotion of the TLD (Top Level Domain)(Section 3.2) and the provisions on activation of names relating to International Olympic Committee, International Red Cross and Red Crescent Movement (Section 5) and names relating to Intergovernmental Organizations Section (Section 6) are of no force or effect in the proposed .info renewal agreement.

- **Misc. Provisions:** Various other provisions

have been modified to remove references to the initial delegation of the TLD (Top Level Domain), entry into the root-zone, statements made in the registry TLD (Top Level Domain) application and launch of the TLD (Top Level Domain), as they are not applicable to a legacy TLD (Top Level Domain).

Posted for public comment are both clean and "redline" versions of the .info renewal agreement, and the Addendum to the .info renewal agreement that is proposed to be executed by the parties as follows:

- Proposed .info renewal agreement (/sites/default/files/tlds/info/info-proposed-renewal-18mar19-en.pdf)
- Redline showing changes compared to the base registry agreement (/sites/default/files/tlds/info/info-proposed-renewal-redline-18mar19-en.pdf)
- Proposed addendum to the .info renewal agreement (/sites/default/files/tlds/info/info-proposed-addendum-18mar19-en.pdf)

Contractual Compliance Review: As part of the renewal process, ICANN (Internet Corporation for Assigned Names and Numbers) conducted a contractual compliance review of the current .info agreement. Afilias Limited was found to be in compliance with its contractual requirements for the operation of the .info TLD (Top Level Domain).

Section II: Background

ICANN (Internet Corporation for Assigned Names and Numbers) and Afilias Limited first entered into a TLD (Top Level Domain) Registry Agreement on 11 May 2001 (/resources/unthemed-pages/index-d0-2001-05-11-en) for the operation of the .info TLD (Top Level Domain), which was subsequently renewed on 8 December 2006 (/resources/unthemed-pages/index-71-2012-02-25-en) and 22 August 2013 (/resources/agreement/info-2013-08-22-en).

In addition to the .info renewal agreement, the registry agreements of several "legacy" gTLDs, namely, .tel, .mobi, .jobs, .travel, .cat and .pro, have been renewed based on the base registry agreement as a result of bilateral negotiations between ICANN (Internet Corporation for Assigned Names and Numbers) and the applicable registry operators. These renewed agreements can be viewed at: https://www.icann.org/resources/pages/registries/registries-agreements-en (/resources/pages/registries/registries-agreements-en).

Section III: Relevant Resources

- Current .info Registry Agreement and Appendices (/resources/agreement/info-2013-08-22-en)
- Approved base New gTLD (generic Top Level Domain) Registry Agreement (as updated on 31 July 2017) (https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-global-amendment-31jul17-en.html)

Section IV: Additional Information

Section V: Reports

- Report (https://www.icann.org/en/system/files/files/report-comments-info-renewal-03jun19-en.pdf)

Petillion

Annex 4

Proposed Renewal of .biz Registry Agreement

Open Date	Close Date	Staff Report Due
3 Apr 2019 23:59 UTC	14 May 2019 23:59 UTC	3 Jun 2019 23:59 UTC
✔ Comments Closed	✔ Report of Public Comments (https://www.icann.org/en/system/files/files/report-comments-biz-renewal-03jun19-en.pdf)	✔

Follow Updates (/users/sign_up?document_id=13929&following=true)

View Comments (https://mm.icann.org/pipermail/comments-biz-renewal-03apr19/)

Originating Organization

Global Domains Division

Staff Contact

Russ Weinstein, Danielle Gordon

globalsupport@icann org (mailto:globalsupport@icann.org)

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Brief Overview

Purpose: The purpose of this public comment proceeding is to obtain community input on the proposed .biz renewal agreement. This renewal agreement is the result of bilateral discussions between ICANN (Internet Corporation for Assigned Names and Numbers) org and Registry Services, LLC, the registry operator for the .biz top-level domain (TLD (Top Level Domain)).

Current Status: The current .biz Registry Agreement (herein referred to as current .biz agreement) will expire on 30 June 2019. Section 4.2 of the current .biz agreement provides that it shall be renewed upon the expiration of the initial term set forth in Section 4.1.

Next Steps: Following review of the public comments received, ICANN (Internet Corporation for Assigned Names and Numbers) org will prepare and publish a summary and analysis of the comments. The report will be available for the ICANN (Internet Corporation for Assigned Names and Numbers) Board in its consideration of the proposed .biz

renewal agreement.

Report of Public Comments (https://www.icann.org/en/system/files/files/report-comments-biz-renewal-03jun19-en.pdf)

Section I: Description and Explanation

The proposed renewal agreement for the .biz TLD (Top Level Domain) is based on the base generic top level domain (gTLD (generic Top Level Domain)) Registry Agreement (https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.html) (herein referred to as base registry agreement) updated on 31 July 2017. However, in order to account for the specific nature of the .biz TLD (Top Level Domain), relevant provisions in the current .biz agreement (/resources/agreement/biz-2013-08-22-en) have been carried over to the proposed .biz renewal agreement (herein referred to as .biz renewal agreement).

As a result, the .biz renewal agreement is substantially similar to the terms of the base registry agreement. Listed below are summaries of both a) provisions in the proposed .biz renewal agreement that are materially different from the current .biz agreement, and b) material differences between the .biz renewal agreement and the base registry agreement.

a. **Provisions in the proposed .biz renewal agreement that are materially different from the current .biz agreement:**
   - **Approved Services (Exhibit A):** Consistent with new gTLDs and other legacy TLD (Top Level Domain) registry agreement renewals, Exhibit A has been updated to include the following additional or modified approved services: Bulk Transfer After Partial Portfolio Acquisition (BTAPPA), Internationalized Domain Names (IDNs (Internationalized Domain Names)), and an implementation period of 270

calendar days to transition all systems to the requirements of the .biz renewal agreement.

- **Protection of Legal Rights of Third Parties and Minimum Requirements for Rights Protection Mechanisms (Section 2.8 and Specification 7 of the .biz renewal agreement):** To better conform with the base registry agreement, the .biz renewal agreement will be subject to the Rights Protection Mechanisms (RPMs) set forth in Section 2 of Specification 7, including the Uniform Rapid Suspension (URS (Uniform Rapid Suspension)) system, the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP (Post-Delegation Dispute Resolution Procedure)), and the Registration Restriction Dispute Resolution Procedure (RRDRP (Registration Restrictions Dispute Resolution Procedure)). Registry Services, LLC is also authorized to develop additional RPMs. Section 2.8 of the .biz renewal agreement also does not contemplate processes and procedures for launch of the TLD (Top Level Domain), as is consistent with other legacy TLD (Top Level Domain) Registry Agreement renewals.

- **Public Interest Commitments (Section 2.17 and Specification 11 of the .biz renewal agreement):** The Registry Operator has adopted the public interest commitments and applicability of the Public Interest Commitment Dispute Resolution Procedure (PICDRP (Public Interest Commitment Dispute Resolution Procedure)) comparable to new gTLD (generic Top Level Domain) registry operators (except Specification 11, Section 2, which refers to the initial application for the gTLD (generic Top Level Domain)).

- **Fees to be paid to ICANN (Internet Corporation for Assigned Names and**

Numbers) org (Section 6.1 of the .biz renewal agreement): The .biz renewal agreement has been modified to match the fee provisions in the base registry agreement. Accordingly, the registry fixed fee of US$6,250 per calendar quarter is proposed for the .biz TLD (Top Level Domain), beginning on the effective date of the .biz renewal agreement. The registry-level transaction fee remains at $0.25 for each annual increment of an initial or renewal domain name registration.

- **Registry Code of Conduct (Section 2.14 and Specification 9 of the .biz renewal agreement):** The Registry Operator has adopted the code of conduct in conformity with the base registry agreement.

- **Pricing for Domain Name (Domain Name) Registrations and Registry Services (Section 2.10 of the .biz renewal agreement):** In alignment with the base registry agreement, the price cap provisions in the current .biz agreement, which limited the price of registrations and allowable price increases for registrations, are removed from the .biz renewal agreement. Protections for existing registrants will remain in place in line with the base registry agreement. This change will not only allow the .biz renewal agreement to better conform with the base registry agreement, but also takes into consideration the maturation of the domain name market and the goal of treating the registry operator equitably with operators of new gTLDs and other legacy gTLDs utilizing the base registry agreement.

- **Misc. Provisions:** Various other provisions have been modified, at the request of the registry operator and after bilateral negotiations, to align with terms previously included in the current .biz agreement.

b. **Material differences between the .biz renewal agreement and the base registry agreement:**

- **Registry Interoperability and Continuity (Section 2.7 and Specification 6 of the base registry agreement):** Section 6 of Specification 6 of the base registry agreement (Name Collision Occurrence Management) will not apply to the .biz TLD (Top Level Domain) as it has been in operation since 2001. This is consistent with other legacy TLD (Top Level Domain) registry agreement renewals.

- **Emergency Transition (Section 2.13 of the base registry agreement) and Continued Operations Instrument (Section 2.12 and Specification 8 of the base registry agreement):** In alignment with the base registry agreement, the .biz renewal agreement will continue to incorporate the registrant protection provision allowing ICANN (Internet Corporation for Assigned Names and Numbers) org to designate an emergency interim registry operator if emergency thresholds for registry functions are reached. However, the Continued Operations Instrument requirement will not apply to the .biz TLD (Top Level Domain) as it has been in continuous operation since 2001. As a result, Section 4.3(c) of the base registry agreement (Termination by ICANN (Internet Corporation for Assigned Names and Numbers)) is not applicable to the .biz TLD (Top Level Domain) and, therefore, is of no force or effect. This is consistent with other legacy TLDs who have adopted the Emergency Transition provisions.

- **Traffic Data (Section 2.19 of the .biz renewal agreement):** The .biz renewal agreement will carry over the existing Traffic Data provision from the current .biz agreement. This provision permits the Registry Operator to use traffic data regarding domain names or non-existent

domain names for purposes such as security and stability, pinpointing specific points of failure, characterizing attacks and misconfigurations, identifying compromised networks and hosts, and promoting the sale of domain names.

- **Pass Through Fees related to the Trademark Clearinghouse (Section 6.4 of the base registry agreement):** This requirement will not apply to the .biz TLD (Top Level Domain) as it has been in continuous operation since 2001. As a result, Section 6.4 of the base registry agreement is not applicable to the .biz TLD (Top Level Domain) and, therefore, is of no force or effect. This is consistent with other legacy TLD (Top Level Domain) registry agreement renewals.

- **Schedule of Reserved Names (Specification 5 of the base registry agreement)**: The .biz renewal agreement amends Section 2 of Specification 5 (Two-Character ASCII Labels) allowing the registry operator to allocate two-character labels that were reserved in prior registry agreements. The allocation of two-character labels is subject to the Registration Policy and Post Registration Complaint Investigation provisions, as stated in Appendix A of the Authorization for Release of Letter/Letter Two-Character ASCII Labels at The Second Level issued to all new gTLD (generic Top Level Domain) registry operators on 13 December 2016. Additionally, the provision on the Registry Operator's use of up to 100 names for the operation and promotion of the TLD (Top Level Domain) (Section 3.2) and the provisions on activation of names relating to International Olympic Committee, International Red Cross and Red Crescent Movement (Section 5) and names relating to Intergovernmental Organizations Section (Section 6) are of no

force or effect in the proposed .biz renewal agreement.

- **Misc. Provisions:** Various other provisions have been modified to remove references to the initial delegation of the TLD (Top Level Domain), entry into the root zone, statements made in the registry TLD (Top Level Domain) application, and launch of the TLD (Top Level Domain), as they are not applicable to a legacy TLD (Top Level Domain).

Posted for public comment are both clean and "redline" versions of the .biz renewal agreement, and the Addendum to the .biz renewal Agreement that is proposed to be executed by the parties as follows:

- Proposed .biz renewal agreement (/sites/default/files/tlds/biz/biz-proposed-renewal-03apr19-en.pdf)
- Redline showing changes compared to the base registry agreement (/sites/default/files/tlds/biz/biz-proposed-renewal-redline-03apr19-en.pdf)
- Proposed addendum to the .biz renewal agreement (/sites/default/files/tlds/biz/biz-proposed-addendum-03apr19-en.pdf)

Contractual Compliance Review: As part of the renewal process, ICANN (Internet Corporation for Assigned Names and Numbers) conducted a contractual compliance review of the current .biz agreement. Registry Services, LLC was found to be in compliance with its contractual requirements for the operation of the .biz TLD (Top Level Domain).

Section II: Background

ICANN (Internet Corporation for Assigned Names and Numbers) org and NeuStar, Inc. entered into the current .biz agreement on 22 August 2013 (/resources/agreement/biz-

2013-08-22-en) for the operation of the .biz TLD (Top Level Domain). Effective 08 August 2017, the .biz TLD (Top Level Domain) was assigned by NeuStar, Inc. to Registry Services, LLC, which now operates the .biz TLD (Top Level Domain).

In addition to the .biz renewal agreement, the registry agreements of several legacy gTLDs, namely, .tel, .mobi, .jobs, .travel, .cat and .pro, have been renewed based on the base registry agreement as a result of bilateral negotiations between ICANN (Internet Corporation for Assigned Names and Numbers) org and the applicable registry operators. These renewed agreements can be viewed at: https://www.icann.org/resources/pages/registries/registries-agreements-en (/resources/pages/registries/registries-agreements-en).

Section III: Relevant Resources

- Current .biz Registry Agreement and Appendices (/resources/agreement/biz-2013-08-22-en)
- Approved base New gTLD (generic Top Level Domain) Registry Agreement (as updated on 31 July 2017) (https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-global-amendment-31jul17-en.html)

Section IV: Additional Information

Section V: Reports

- Report (https://www.icann.org/en/system/files/files/report-comments-biz-renewal-03jun19-en.pdf)

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Annex 5

Staff Report of Public Comment Proceeding

Proposed Renewal of .org Registry Agreement	
Publication Date:	3 June 2019
Prepared By:	Russ Weinstein

Public Comment Proceeding	
Open Date:	18 March 2019
Close Date:	29 April 2019
Staff Report Due Date:	13 May 2019 3 June 2019 (extended)

Important Information Links
Announcement
Public Comment Proceeding
View Comments Submitted

Staff Contact:	Russ Weinstein	**Email:**	globalsupport@icann.org

Section I: General Overview and Next Steps

General Overview

ICANN organization posted for public comment the proposed agreement for the renewal of the .org Registry Agreement, which expires on 30 June 2019. The proposed .org Registry Agreement is the result of discussion, negotiations and agreement between ICANN org and Public Interest Registry, a Pennsylvania non-profit corporation – the Registry Operator for the .org top-level domain (TLD).

The proposed .org Registry Agreement is based on the current .org Registry Agreement and incorporates various terms of the approved base gTLD Registry Agreement modified for a legacy TLD. The proposed changes to the .org Registry Agreement are similar to those made in several recently renewed "legacy" gTLD agreements, namely .cat, .jobs, .mobi, .pro, .tel, and .travel.

ICANN org posted the proposed renewal of the .org Registry Agreement for public comment from 18 March 2019 through 29 April 2019. ICANN org received over 3,200 submissions during this public comment period, which is comparable to a prior .org Registry Agreement renewal comment period in 2006, where over 2,000 comments were received.

Next Steps

ICANN org will consider the public comments received and, in consultation with the ICANN Board of Directors, make a decision regarding the proposed registry agreement.

Section II: Contributors

At the time this report was prepared, over three-thousand, two hundred (3,200) community submissions had been received. Due to the large number of comments received, not all contributors are identified by name in this report. Contributors consisted of non-profit and charitable organizations, individual registrants, and various community stakeholders and groups. Below is a sampling of organizations and groups that submitted comments, as well as a list of individual contributors whose submissions are quoted in this report. A complete list of contributors and comments can be found at the View Comments Submitted link. To the extent that quotations are used in the following narrative (Section III), such citations will reference the contributor by their initials as indicated in the below tables.

Organizations and Groups:

Name	Submitted by	Initials
AICC, The Independent Packaging Association	Michael D'Angelo	AICC
Internet Commerce Association	Zak Muscovitch	ICA
The Center for Association Leadership (ASAE)	John Graham	ASAE
Youth Sports Collaborative Network	Rob Smith	YSCN
GNSO Intellectual Property Constituency (IPC)	Brian Scarpelli	IPC
National Council of Nonprofits	David L. Thompson	NCNP
International Trademark Association	Lori Schulman	INTA
Non-Commercial Stakeholder Group (NCSG)	Rafik Dammak	NCSG
Registrar Stakeholder Group	Zoe Bonython	RrSG
Electronic Frontier Foundation & Domain Names Rights Coalition	Mitch Stoltz	EFF & DNRC
Not for Profit Operational Concerns (NPOC)	Joan Kerr	NPOC
Collective Group of Non-Profit Organizations*	Briana Thibeau	CGNPO
ICANN Business Constituency (BC)	Steve DelBianco	BC
Tucows Inc.	Graeme Bunton	TC
American College of Osteopathic Surgeons	Carter L. Alleman	ACOS
ICANN At-Large Advisory Committee	Submitted by ICANN Policy Staff in support of the At-Large Community	ALAC
The Centre for Internet and Society, India	Akriti Bopanna	CIS
Foreign Ventures, Inc.	NA	FV

**Collective Group of Non-Profit Organizations includes the following organizations: NPR, YMCA of the USA, C-SPAN, National Geographic Society, AARP, The Conservation Fund, Oceana, National Trust for Historic Preservation.*

Quoted Individual Contributors:

Name	Affiliation (if provided)	Initials
Akbar Ibrahim	NA	AI
Kevin Jackson	bizZone	KJ
Chad Hunter	NA	CH
Michael Ellars	NA	ME
A submission from "AT Domain Admin"	Anonymous Contributor	AC
Peter Taylor	NA	PT

Thomas Hruska	CubicleSoft	TH
Shane Tews	Logan Circle Strategies & American Enterprise Institute	ST
Michael Judd	NA	MJ

Section III: Summary of Comments

General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above in the "Important Information Links" section (View Comments Submitted). Comments received after the closing date of 29 April 2019 may not have been included in the summary and analysis of this report.

ICANN org received over 3,200 comments concerning the proposed renewal of the .org Registry Agreement. ICANN org appreciates the considerable amount of participation in this proceeding and is grateful to those who provided their feedback and suggestions.

Given the amount of feedback received, it is not practical to capture every comment or theme of agreement, opposition or new ideas. As such, this public comment summary and analysis only identifies areas with a substantial number of similar comments and excludes comments unrelated to the proposed renewal.

A complete list of the public comments received can be found via the View Comments Submitted link.

Comments submitted generally relate to the following themes: (i) removal of the price cap provision, (ii) inclusion of Rights Protection Mechanisms (RPMs), and (iii) the registry agreement renewal process.

The Removal of the Price Cap Provision

A primary concern voiced in the comments was with respect to the proposed removal of the price cap provisions. This provision in the current .org registry agreement limits the wholesale price of domain name registrations and the allowable price increases for domain name registrations by the registry operator to the registrars. Commenters with this concern largely consisted of individual registrants, registrants writing on behalf of a non-profit organization(s), and organizations who serve the interest of registrants.

Commenters provided a variety of reasons for concern about the price cap provision removal. Many commenters indicated the existing pricing protections should remain in part because they believed legacy TLDs, and the .org TLD in particular, are unique and should be treated differently than new gTLDs. They expressed that the .org TLD, and legacy TLDs in general, are viewed as public trusts and should be protected and managed as such. In addition to its history as a legacy TLD, commenters noted that the .org TLD is also unique in that .org was developed, cultivated and established over decades as catering to non-profit and similar

charitable organizations. Commenters also indicated that organizations and individuals who have historically registered legacy domain names did so under the assumption that prices would not suddenly increase.

> "*the .org gTLD has assumed the reputation as the domain of choice for organisations dedicated to serving the public interest… We have come to rely on this reputation to help distinguish the online presence of our organizations from the online presence of organizations that are not intended to serve the public interest. As nonprofit organizations, we also have come to rely on the certainty and predictability of reasonable domain name registration expenses when allocating our limited resources."* – CGNPO

There was also a concern that without price controls, prices to renew domain names could become prohibitively expensive and the barrier to entry for small non-profits and organizations could be significantly raised, leading to a significant negative impact on the non-profit, charitable and small organizations who are registrants of the .org TLD.

> *"The org TLD is overwhelmingly used by non-profits and by removing the caps on the prices of org domains, ICANN will make it significantly more difficult for non-profits to do business on the internet or raise barriers to entry for new non-profits."* - AI

Commenters also raised concerns about the burden and costs associated with moving their web presence to another TLD, which could potentially be capitalized on by the registry operator with higher renewal prices without a price cap.

> *"While individual domains are typically inexpensive, the costs of switching between them for an organization can be exceptionally high. Moving from one TLD to another might require notifying clients, reprinting materials, updating databases, and reconfiguring services. Consequently as consumers are locked in, there either needs to be competition at the registry level, or some form of price constraint. Given the nature of the contracts, specifically presumptive renewal for the incumbent registry operators, registry prices are not subject to competition and do not face the downward pricing pressure that every other provider of Internet infrastructure faces."* – TC

Additionally, commenters expressed their perception that the .org TLD's registry operator is inherently positioned as a monopoly, and because of this environment, consumers require regulatory pricing protections.

> "*Having one company able to control pricing for an entire TLD, and to have no restrictions, controls or guidelines on their ability to increase the pricing: is in my opinion creating a monopoly, with all that implies - definitely counter to the idea of a free market. Especially in the area of .org, which is traditionally - and branded - to be the domain for not-for-profits…*" - KJ

Commenters also conveyed their concern that ICANN org is only acting in the interest of contracted parties by removing the price cap provision. Some suggested that ICANN org may also be benefitting financially from the removal of the price cap provision.

> *"Who benefits from the increase in pricing? Will the service performance increase, NO, will the profits to the company running the TLD increase, YES, will ICANN see*

more money to spend on 5 star resort gatherings or hire more pawns to accomplish nothing, YES…" – CH

Commenters also noted that the protections afforded to registrants in the Base gTLD Registry Agreement fall short of what they believe should be in place for the .org TLD and believed they should not be viewed as a viable replacement to the existing price cap provision.

> *"It can also be argued that existing .org registrants are somehow "protected" because they can renew their .org domain name for ten years before being subjected to uncapped price hikes under the Proposed Renewal Agreement. The fact is however, that there is no requirement that registrants be expressly notified that they had better register for ten years in advance or be subject to unknown, indeterminate, and potentially game-changing renewal costs. As such, it is likely that millions of charities and non-profits will not take advantage of the ability to renew for ten years… [O]nce caps are removed, once the initial ten-year period has elapsed, every single registrant is subject to untold, indeterminate, and potentially substantial price hikes, meaning that this is nothing but a temporary reprieve. Lastly, the numerous prospective .org registrants who want to establish themselves in the most appropriate registry for a charity or non-profit at some point in the next ten years, could find themselves subject to capricious and expensive registration fees for .org domain names and as such receive no benefit whatsoever from the temporary reprieve."* – ICA.

Commenters also expressed concerns about how the removal of the price cap provision would impact international communities and charitable organizations that come from developing or underdeveloped regions.

> *"The internet is slowly removing barriers for organizations to network internationally, especially in Africa and other poorer counties, however currency exchange rates remains an obstacle for non-profit and other organizations in countries with weak currencies… By removing price increase limitations, ICANN will merely exclude the poor from the much needed international support they so desperately need."* – AC

Commenters questioned whether ICANN org conducted an economic study or research on the potential market implications of removing the existing pricing protections.

> "*The RrSG is concerned that ICANN has arbitrarily chosen to remove pricing restrictions that could negatively impact current and future registrants of .ORG, .BIZ, and/or .INFO domain names where there is no reasonable competition to influence reasonable pricing and without engaging in appropriate market analysis*." – RrSG

Others suggested that perhaps ICANN org should re-evaluate pricing protections in the Base Registry Agreement and impose similar price cap provisions across all TLDs.

> *"Indeed, it is disappointing that the base registry agreement should not favour the many over the few, and this is what I mean when I say that the justification seems to be back-to-front. Equitable treatment would be equally well served, if not better, by requiring price stability in all gTLDs."* – PT

Another concern noted was that the removal of the current price cap provisions in the .org TLD would also set a precedent for the lifting of pricing protections on .com and .net TLDs.

"*this proposed change is easily perceived by myself and many others as testing the waters for similarly transitioning .net and then .com to the base pricing model. The Registry for .com and .net is Verisign, Inc., which is a publicly traded company on NASDAQ (VRSN). That alone is what makes this proposal for changing the pricing model for .org a very slippery slope that should not be pursued.*" – TH

Comments in favor of the removal of the price cap provision in the .org Registry Agreement indicated that ICANN org is not and should not be a price regulator. They also pointed to protections that will be made available via the terms incorporated from the base Registry agreement and indicated they felt the market was healthy and competitive enough to move to market-based pricing for the .org TLD.

"*While ICANN is not a regulator, it has had its contracts reviewed by the DOJ's antitrust division, which concluded that only .com had market power in the domain space. Allowing .org and future domain names to move to market-based pricing makes sense with today's healthy TLD market, which is populated with many choices for consumers to choose from.*" – ST

"*Moreover, the new Base Registry Agreement guarantees that current registrants have the right to lock in current domain prices for their renewals. Both .ORG and .INFO will be required to give 6 months of notice before increasing domain renewal prices, and must allow registrants to lock-in current prices for up to 10 years… The ability to lock-in prior prices for 10 years is valuable to a business registrant who has invested in a domain name for branding, labeling, and marketing materials. In the longer term, business registrants seek predictability about renewal costs for their domain name(s).*" – BC

The Inclusion of Rights Protection Mechanisms (RPMs) in legacy gTLDs

Commenters including registrants and organizations who advocate on behalf of registrants expressed concern over the addition of RPMs, including Uniform Rapid Suspension (URS), into legacy gTLD registry agreements on various grounds. Those who were opposed to including the RPMs pointed out that RPMs are not consensus policy for legacy gTLDs, and they believed that incorporating RPMs into legacy gTLD registry agreements should be halted until the RPM working group completes its review of the RPMs and comes to its final recommendations. These commenters also expressed the concern that ICANN org is setting substantive policy for gTLDs by adopting elements of the Base gTLD Registry Agreement into amended and renewed registry agreements for legacy gTLDs.

"*Procedurally, it is inappropriate for the ICANN organization to impose these mechanisms on .org, a legacy TLD that dates from the earliest days of the domain name system. Such a move must come, if at all, from the ICANN community after an evidence-based discussion. ICANN staff have presented no evidence of any need for Trademark Claims and URS in the .org TLD."* – EFF and DNRC

Commenters in favor of the addition of enhanced rights protection mechanisms in the .org Registry Agreement applauded Public Interest Registry for electing to include the provisions.

"*The IPC generally supports the transition of 'legacy' TLDs to a version of the base Registry Agreement, particularly given that the transition involves a partial adoption of Rights Protection Mechanisms (RPMs) designed for the release of gTLDs in 2012. The IPC also supports the inclusion of Public Interest Commitments and Registry Operator Code of Conduct in the proposed .ORG Registry Agreement.*" – IPC

The Registry Agreement Renewal Process

Another concern raised by commenters was the process ICANN org has followed to renew legacy registry agreements. Specifically, commenters suggested the need for greater community input at earlier stages of the negotiation process.

"*ICANN should seek community input before negotiating registry agreement renewals These proposed agreements were already negotiated and agreed by ICANN and Afilias (for .INFO) and Public Interest Registry (for .ORG). At this point, ICANN seeks public comment not to renegotiate these agreements, but only to make a report of public comments 'available for the ICANN Board in its consideration of the proposed renewal agreement.'… The BC again asks ICANN to solicit community input before it enters negotiations with contract parties, so that ICANN understands the priority concerns of business users and registrants when it negotiates on our behalf."* – BC

Others felt that a competitive registry operator bidding process should be instated in place of presumptive renewal of the agreement.

"If ICANN wants to remove price restrictions in the name of deregulation than they need to open up the tender process so that groups that believe they can provide the required level of service for lower prices that PIR currently charge are allowed to compete." – MJ

Section IV: Analysis of Comments

General Disclaimer: This section intends to provide an analysis and evaluation of the comments submitted along with explanations regarding the basis for any recommendations provided within the analysis.

As the .org Registry Agreement neared its expiration, ICANN org followed the established practice of offering the Registry Operator the option of migrating to the Base gTLD Registry Agreement for the legacy gTLD. Recent legacy gTLD agreements renewed according to the Base gTLD Registry Agreement include .cat, .jobs, .mobi, .pro, .tel and .travel. ICANN org migrates legacy TLDs to the Base gTLD Registry Agreement as it provides additional safeguards and security and stability requirements which are more robust than what exists in legacy agreements. Additionally, the Base gTLD Registry Agreement lays the framework for consistency for registries, registrars and registrants, and provides for operational efficiencies for ICANN org.

The Removal of the Price Cap Provision

The Base gTLD Registry Agreement does not include the price cap provisions which are in the current .org agreement. The price controls for .org were initially included years ago by the US government when the domain name market consisted only of a handful of top-level domains. There are now over 1200 generic top-level domains available, and all but a few adhere to a standard contract that does not contain price regulation. Removing the price cap provisions in the .org Registry Agreement is consistent with the Core Values of ICANN org as enumerated in the Bylaws approved by the ICANN community. These values guide ICANN org to introduce and promote competition in the registration of domain names and, where feasible and appropriate, depend upon market mechanisms to promote and sustain a competitive environment in the DNS market.

Aligning with the Base gTLD Registry Agreement would also afford protections to existing registrants. The registry operator must provide six months' notice to registrars for price changes and enable registrants to renew for up to 10 years prior to the change taking effect, thus enabling a registrant to lock in current prices for up to 10 years in advance of a pricing change. Enacting this change will not only allow the .org renewal agreement to conform to the Base gTLD Registry Agreement, but also takes into consideration the maturation of the domain name market and the goal of treating the Registry Operator equitably with registry operators of new gTLDs and other legacy gTLDs utilizing the Base gTLD Registry Agreement.

ICANN org will consider the feedback from the community on this issue.

Registry Fees

ICANN org would also like to clarify a few points raised in the comment forum. The registry fees paid to ICANN org are not directly tied to the domain name registration price. The proposed registry fees include a fixed amount of US$6,250.00 per calendar quarter and a fixed transaction fee of US$0.25 multiplied by the number of annual increments of an initial or renewal domain name registration without regard to the specific pricing of .org domain name registrations.

The Inclusion of Rights Protection Mechanisms (RPMs) in legacy gTLDs

In the case of the proposed renewal of the .org Registry Agreement, as well as other legacy gTLD registry agreement renewals (namely, cat, .jobs, .mobi, .pro, .tel, and .travel) inclusion of the URS was agreed to via bilateral negotiations between the applicable Registry Operator and ICANN org. ICANN org has not moved to make the URS mandatory for any legacy gTLD. Additionally, there is nothing restricting registry operators from imposing additional RPMs in other ways.

The Registry Agreement Renewal Process

In the registry agreement renewal process, negotiations are initiated between the two contracted parties. ICANN org and the registry operator engage in renewal discussions, where both parties consider whether to renew the agreement in its current form or transition all or part of it to the Base gTLD Registry Agreement. Once the parties are in alignment on the form of agreement, a draft renewal agreement is produced by ICANN org for the review and comment of the registry operator. After both parties agree on the terms of the proposed renewal registry agreement, ICANN org invites the community to comment on the agreement, through the public comment process, in order to collect valuable community input before proceeding. The proposed renewal of the .org Registry Agreement is a result of this established process. The Base gTLD Registry Agreement, which the proposed .org Registry Agreement renewal is proposed to align with, was developed with substantial community input via the open and transparent multi-stakeholder approach.

Next Steps

ICANN org will consider the public comments received and, in consultation with the ICANN Board of Directors, make a decision regarding the proposed registry agreement.

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Annex 6

Staff Report of Public Comment Proceeding

Proposed .info Renewal Registry Agreement	
Publication Date:	3 June 2019
Prepared By:	Russ Weinstein

Public Comment Proceeding	
Open Date:	18 March 2019
Close Date:	29 April 2019
Staff Report Due Date:	13 May 2019 3 June 2019 (extended)

Important Information Links
Announcement
Public Comment Proceeding
View Comments Submitted

Staff Contact:	Russ Weinstein	**Email:**	globalsupport@icann.org

Section I: General Overview and Next Steps

General Overview

ICANN organization posted for public comment the proposed agreement for the renewal of the .info Registry Agreement, which expires on 30 June 2019. The proposed .info Registry Agreement is the result of discussion and agreement between ICANN and Afilias Limited – the Registry Operator for the .info top-level domain (TLD).

The proposed .info Registry Agreement is based on the current .info Registry Agreement and incorporates various terms of the approved Base gTLD Registry Agreement modified for a legacy Top-Level Domain (TLD). The proposed changes to the .info Registry Agreement are similar to those made in several recently renewed "legacy" gTLD agreements, namely .cat, .jobs, .mobi, .pro, .tel and .travel.

ICANN org posted the proposed renewal of the .info Registry Agreement for public comment from 18 March 2019 through 29 April 2019. ICANN received over 500 submissions during the public comment period.

Next Steps

ICANN org will consider the public comments received and, in consultation with the ICANN Board of Directors, make a decision regarding the proposed registry agreement.

Section II: Contributors

At the time this report was prepared, a total of five-hundred and fourteen (514) community submissions had been posted to the forum. Due to the large number of comments received, not all contributors are identified by name in this report. Contributors consisted of small businesses, individual registrants, and various community stakeholders and groups. Below is a sampling of organizations and groups that submitted comments, as well as a list of individual contributors whose submissions are quoted in this report. A complete list of the contributors and comments can be found at the View Comments Submitted link. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor by their initials as indicated in the below tables.

Organizations and Groups:

Name	Submitted by	Initials
Internet Commerce Association	Zak Muscovitch	ICA
ICANN Business Constituency	Steve DelBianco	BC
Infrared Cameras Inc	Merissa Kelly	ICI
Intellectual Property Constituency	Brian Scarpelli	IPC
Internet Domain Owners Association	Matt Hooker	IDOA
International Trademark Association	Lori Schulman	INTA
BTW Design Inc.	Becky Ward	BTWD
Registrar Stakeholder Group	Zoe Bonython	RrSG
Tucows Inc.	Graeme Bunton	TC
ICANN At-Large Advisory Committee	Submitted by ICANN Policy Staff in support of the At-Large Community	ALAC
Summit Solutions Ltd	Brian Stein	SSL
Strategic Investment Management Ltd. Corporate	Matt Hooker	SIM
Leap of Faith Financial Services Inc.	George Kirikos	LFFS

Quoted Individuals:

Name	Affiliation (if provided)	Initials
Brian Stein	Summit Solutions Ltd.	BS
Paul Tattersfield	GPM Group	PT
Charles (Chuck) Hagelgans	NA	CH
Michael Neuffer	NA	MN
Shane Bill	NA	SB
A submission from AT Domain Admin	Anonymous Contributor	ATDA
Daniel Feenberg	National Bureau of Economic Research	DF
Martin Houlden	NA	MH
Dan Carew	NA	DC
Rios Wendell	NA	RW
George Kirikos	Leap of Faith Financial Services Inc.	GK
Steven Sun	NA	SS

Section III: Summary of Comments

General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above in the "Important Information Links" section (View Comments Submitted). Comments received after the closing date of 29 April 2019, may not have been included in the summary and analysis of this report.

ICANN org received over 500 comments concerning the proposed renewal of the .info Registry Agreement. ICANN org appreciates the considerable amount of participation in this proceeding and is grateful to those who provided their feedback and suggestions.

Given the amount of feedback received, it is not practical to capture every comment or theme of agreement, opposition or new ideas. As such, this public comment summary and analysis only identifies areas with a substantial number of similar comments and excludes comments unrelated to the proposed renewal.

A complete list of the public comments received can be found via the View Comments Submitted link.

Comments submitted generally relate to the following themes: (i) removal of the price cap provision, (ii) inclusion of Rights Protection Mechanisms (RPMs), and (iii) the registry agreement renewal process.

The Removal of the Price Cap Provision

A primary concern voiced in the comments was with respect to the proposed removal of the price cap provisions. This provision in the current .info registry agreement limits the wholesale price of domain name registrations and the allowable price increases for domain name registrations by the registry operator to the registrars. Commenters with this concern largely consisted of individual registrants, registrants writing on behalf of small businesses and informational sites, and organizations who serve the interest of registrants.

Commenters provided a variety of reasons for concern about the price cap provision removal. Many commenters indicated the existing pricing protections should remain in part because they believed legacy TLDs are unique and should be treated differently than new gTLDs. They expressed that legacy TLDs, such as .info, are viewed as a public trust and should be protected and managed as such.

> *"The logic to run older top level domains should be the same as those running new top level domain names is flawed. There is a long history of the legacy top level domains and how the contracts to the registries were awarded. With the new top level domains, companies risked their own money to introduce the new domains. The registries running .info & .org are merely stewards for what should be considered a resource to the web. As an early adopter of the .info domain and holder of some .info domain names dating backing to 2002, ICANN must come to the realization that price cap provisions in the current .info agreement must not change going forward."* – BS

In addition to its history as a legacy TLD, commenters noted that the .info TLD is also unique in that .info was developed, and over time has been established internationally, as catering to trade and the dissemination of business-related information for smaller businesses.

> *"The .info TLD is a legacy TLD recognised internationally for trade and business related information, and an essential commodity for small businesses trying to break into international markets with the strong local content focus of search [engines]. Country TLDs merely limit business opportunities to local markets via the most prominent search [engines], while alternative international TLDs are often taken or prohibitively expensive."* – ATDA

Furthermore, commenters indicated that with legacy gTLDs, organizations and individuals who have historically registered domain names did so under the assumption that prices would not suddenly increase. There was also a concern that without price controls, prices to renew domain names could become prohibitively expensive, raising the barrier to entry for individuals and small entities and leading to a negative impact on the .info TLD registrants. Commenters also brought up the burden and costs associated with moving their web presence to another TLD, which could potentially be capitalized on by the registry operator with higher renewal prices without a price cap.

> *"I use a .info domain for personal use. One primary reason I chose .info was because it was affordable and would remain as such. Please do not permit the .info TLD to allow large price increases, at least not for existing customer. Identities are built on domain names, and many would be hurt if they had to change their domain or face price extortion."* – DC

> *"This is quite simply because domains are not substitutable. The disruption cost to move to an alternative far outweighs the cost to provide the service, so rather than creating the required competition ICANN is simply creating a series of non-competing private monopolies and the removal of prices caps will simply compound this policy failure."* – PT

Additionally, commenters expressed their perception that the .info TLD's registry operator is inherently positioned as a monopoly, and because of this environment, consumers require regulatory pricing protections.

> *"I am opposed to the removal of the INFO domain name price cap. ICANN grants Afilias Limited a *de facto* monopoly on domain names. ICANN therefore has a public responsibility to impose limits of the use of that monopoly. ICANN's abrogating of that responsibility would give Afilias Limited free rein to charge any amount they wished… Please do not create another unlimited monopoly by removing the INFO domain name price cap."* – CH

Commenters also conveyed their concern that ICANN org is only acting in the interest of contracted parties by removing the price cap provision. Some suggested that ICANN org may also be benefitting financially from the removal of the price cap provision.

> *"ICANN needs to decide if it wishes to be a bottom-up consensus driven governance organization or simply a trade organization looking after its own contracted parties from which it derives its own revenue… Whilst this approach has provided substantial*

benefits for ICANN[']s contracted parties this approach has provided very few tangible consumer benefits." – PT

"The proposed removal of the caps on the gTLDs (biz/info/org) would only drive up prices for all users and line the pockets of ICANN and the owners of the privatized registries while ignoring the long history of those TLDs. The gTLDs are [our] common resource the current registries are just their Stewards." – MN

Commenters also expressed concerns about how the removal of the price cap provision would potentially impact international registrants and communities from developing and underdeveloped regions.

"I would be concerned that ICANN is going to open up .org, .info, and .biz into a realm of no price restrictions. This could have massive impacts on organizations, small businesses, and other groups who are trying to get online and start out. I'm even thinking beyond first-world countries, and thinking towards third-world or others who may not have the same income level or accessibility." – SB

"Being a small business owner in Brazil is already hard enough. I provide an .info domain for historic reasons, since at the time we're unable to purchase the related .com domain. The business is still small and we have no venture capitalists backing it. Besides that our currency market value is ¼ of U$." – RW

Commenters questioned whether ICANN org had conducted any research or commissioned an economic study of the potential market implications of removing the current price cap provision.

"I [can't] find any justification or reasoning behind the proposal to uncap registry fees. Without such material, how can interested parties make comments that are relevant to the proposal? Hence I must oppose the proposal as without merit." – DF

Comments in favor of the removal of the price cap provision in the .info Registry Agreement cited the belief that removing price restrictions would lead to a reduction in domain name squatting. They also indicated that ICANN org is not and should not be a price regulator.

"I think this is a good idea. Something needs to be done to stop Domain name squatters siting on good names for years and demanding outrageous sums for their release and sale. Vastly increasing the prices of domains would go a long way to stopping this practice." – MH

"Given the BC's established position that ICANN should not be a price regulator, and considering that .ORG and .INFO are adopting RPMs and other registrant provisions we favor, the BC supports broader implementation of the Base Registry Agreement, including the removal of price controls." – BC

The Inclusion of Rights Protection Mechanisms (RPMs) in legacy gTLDs

Commenters including registrants and organizations who advocate on behalf of registrants expressed concern over the addition of RPMs, including Uniform Rapid Suspension (URS),

into legacy gTLD registry agreements on various grounds. Those who were opposed to including the RPMs pointed out that RPMs are not consensus policy for legacy gTLDs, and they believed that incorporating RPMs into legacy gTLD registry agreements should be halted until the RPM working group completes its review of the RPMs and comes to its final recommendations. These commenters also expressed the concern that ICANN org is setting substantive policy for gTLDs by adopting elements of the Base gTLD Registry Agreement into amended and renewed registry agreements for legacy gTLDs.

> *"Given that the RPM PDP of the GNSO is actively reviewing the URS, including determining whether or not it should be a consensus policy, no steps should be taken by ICANN staff and/or the registry operators to unilaterally impose it upon registrants. Indeed, there are numerous proposals to actively change the URS (including a proposal to explicitly eliminate it)… Such flawed RPMs whose creation was rushed before the launch of new gTLDs, and which are tilted in favour of large multinational companies, need to be reviewed and corrected before they are ever adopted for legacy gTLDs like .com/net/org."* – GK

Commenters in favor of the adoption of enhanced rights protection mechanisms in the .info Registry Agreement renewal proposal were encouraged that Afilias Limited elected to include the provisions.

> *"INTA is encouraged to see that ICANN and Afilias Limited used the new RA as a basis for their negotiations for the renewal of the .INFO registry agreement. Obviously, there are parts of the New RA that are simply inapposite for a legacy gTLD like .INFO. For example, it makes sense that the .INFO registry agreement would not include those provisions from the New RA that were developed for as-yet-to-be-launched gTLDs, and don't apply for a gTLD that has been in operation for some time. That distinction does not hold equally true for other provisions from the New RA such as the Uniform Rapid Suspension (URS) policy from Specification 7 § 2(b), or the Public Interest Commitments (PICs) from Specification 11 §§ 3(a) and (b) which are as beneficial for protecting consumers in new gTLDs as in legacy TLDs. INTA is pleased to see that the new tools that have been developed to help protect consumers and help to preserve the security, stability, and resiliency of the DNS will be employed by .INFO. Moreover, the URS and Spec. 11 PICs carry important substantive benefits in this context because they carry the added procedural benefit of consistency."* – INTA

The Registry Agreement Renewal Process

Another concern raised by commenters was the process ICANN org has followed to renew legacy registry agreements. Specifically, commenters suggested that a competitive registry operator bidding process should be instated in place of presumptive renewal of the agreement.

> *"ICANN should actively seeking new providers who can lower the cost of the .info domain names and award the agreement to a winning bidder, for the public's benefit. An open, fair and competitive process should be taken to procure the .info domain name operator before renewing any agreement."* – SS

Section IV: Analysis of Comments

General Disclaimer: This section intends to provide an analysis and evaluation of the comments submitted along with explanations regarding the basis for any recommendations provided within the analysis.

As the .info Registry Agreement neared its expiration, ICANN org followed the established practice of offering the Registry Operator the option of migrating to the Base gTLD Registry Agreement for the legacy gTLD. Recent legacy gTLDs that renewed according to the Base gTLD Registry Agreement include .cat, .jobs, .mobi, .pro, .tel and .travel. ICANN org migrates legacy TLDs to the Base gTLD Registry Agreement as it provides additional safeguards and security and stability requirements which are more robust than what exists in legacy agreements. Additionally, the Base gTLD Registry Agreement lays the framework for consistency for registries, registrars and registrants, and provides for operational efficiencies for ICANN org.

The Removal of the Price Cap Provision

The Base gTLD Registry Agreement does not include the price cap provisions which are in the current .info agreement. The price controls for .info have been in place since the inception of its ICANN org contract, when the domain name market consisted only of a handful of top-level domains. There are now over 1200 generic top-level domains available, and all but a few adhere to a standard contract that does not contain price regulation. Removing the price cap provisions in the .info Registry Agreement is consistent with the Core Values of ICANN org as enumerated in the Bylaws approved by the ICANN community. These values guide ICANN org to introduce and promote competition in the registration of domain names and, where feasible and appropriate, depend upon market mechanisms to promote and sustain a competitive environment in the DNS market.

Aligning with the Base gTLD Registry Agreement would also afford protections to existing registrants. The registry operator must provide six months' notice to registrars for price changes and enable registrants to renew for up to 10 years prior to the change taking effect, thus enabling a registrant to lock in current prices for up to 10 years in advance of a pricing change. Enacting this change will not only allow the .info renewal agreement to conform to the Base gTLD Registry Agreement, but also takes into consideration the maturation of the domain name market and the goal of treating the Registry Operator equitably with registry operators of new gTLDs and other legacy gTLDs utilizing the Base gTLD Registry Agreement.

ICANN org will consider the feedback from the community on this issue

Registry Fees

ICANN org would also like to clarify a few points raised in the comment forum. The registry fees paid to ICANN org are not directly tied to the domain name registration price. The proposed registry fees include a fixed amount of US$6,250.00 per calendar quarter and a fixed transaction fee of US$0.25 multiplied by the number of annual increments of an initial or renewal domain name registration without regard to the specific pricing of .info domain name registrations.

The Inclusion of Rights Protection Mechanisms (RPMs) in legacy gTLDs

In the case of the proposed renewal of the .info Registry Agreement, as well as other legacy gTLD registry agreement renewals (namely, cat, .jobs, .mobi, .pro, .tel, and .travel) inclusion of the URS was agreed to via bilateral negotiations between the applicable Registry Operator and ICANN org. ICANN org has not moved to make the URS mandatory for any legacy gTLD. Additionally, there is nothing restricting registry operators from imposing additional RPMs in other ways.

The Registry Agreement Renewal Process

In the registry agreement renewal process, negotiations are initiated between the two contracted parties. ICANN org and the registry operator engage in renewal discussions, where both parties consider whether to renew the agreement in its current form or transition all or part of it to the Base gTLD Registry Agreement. Once the parties are in alignment on the form of agreement, a draft renewal agreement is produced by ICANN org for the review and comment of the registry operator. After both parties agree on the terms of the proposed renewal registry agreement, ICANN org invites the community to comment on the agreement, through the public comment process, in order to collect valuable community input before proceeding. The proposed renewal of the .info Registry Agreement is a result of this established process. The Base gTLD Registry Agreement, which the proposed .info Registry Agreement renewal is proposed to align with, was developed with substantial community input via the open and transparent multi-stakeholder approach.

Next Steps

ICANN org will consider the public comments received and, in consultation with the ICANN Board of Directors, make a decision regarding the proposed registry agreement.

Petillion

Annex 7

Staff Report of Public Comment Proceeding

Proposed .biz Renewal Registry Agreement	
Publication Date:	3 June 2019
Prepared By:	Russ Weinstein

Public Comment Proceeding	
Open Date:	3 April 2019
Close Date:	14 May 2019
Staff Report Due Date:	29 May 2019 3 June 2019 (extended)

Important Information Links
Announcement
Public Comment Proceeding
View Comments Submitted

Staff Contact:	Russ Weinstein	**Email:**	globalsupport@icann.org

Section I: General Overview and Next Steps

General Overview

ICANN organization posted for public comment the proposed agreement for the renewal of the .biz Registry Agreement, which expires on 30 June 2019. The proposed .biz Registry Agreement is the result of discussion and agreement between ICANN and Registry Services, LLC – the Registry Operator for the .biz top-level domain (TLD).

The proposed .biz Registry Agreement is based on the current .biz Registry Agreement and incorporates various terms of the approved Base gTLD Registry Agreement modified for a legacy TLD. The proposed changes to the .biz Registry Agreement are similar to those made in several recently renewed "legacy" gTLD agreements, namely .cat, .jobs, .mobi, .pro, .tel and .travel.

ICANN org posted the proposed renewal of the .biz Registry Agreement for public comment from 3 April 2019 through 14 May 2019. ICANN org received over 370 submissions during the public comment period.

Next Steps

ICANN org will consider the public comments received and, in consultation with the ICANN Board of Directors, make a decision regarding the proposed registry agreement.

Section II: Contributors

At the time this report was prepared, over three-hundred and seventy (370) community submissions had been posted to the forum. Due to the large number of comments received, not all contributors are identified by name in this report. Contributors consisted of small businesses, individual registrants, and various community stakeholders and groups. Below is a sampling of organizations and groups that submitted comments, as well as a list of individual contributors whose submissions are quoted in this report. A complete list of contributors and comments can be found at the View Comments Submitted link. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor by their initials as indicated in the below tables.

Organizations and Groups:

Name	Submitted by	Initials
Internet Commerce Association	Zak Muscovitch	ICA
ICANN Business Constituency	Steve DelBianco	BC
Intellectual Property Constituency	Brian Scarpelli	IPC
Internet Domain Owners Association	Matt Hooker	IDOA
International Trademark Association	Lori Schulman	INTA
Registrar Stakeholder Group	Zoe Bonython	RrSG
Tucows Inc.	Graeme Bunton	TC
ICANN At-Large Advisory Committee	Submitted by ICANN Policy Staff in support of the At-Large Community	ALAC
WHOIS PRIVACY	HOSTMASTER WEB	WP

Quoted Individuals:

Name	Affiliation (if provided)	Initials
Christian K. Nordtømme	PAPAYA design & marketing	CKN
David Jonker	NA	DJ
Matthew Klein	Submitted under the name "pub 144"	MK
Kevin Ohashi	NA	KO
Jen Lampton	NA	JL
Darius, Marius and Tomas Davainis	Submitted under the name "D. D."	DD
Martin Houlden	NA	MH
George Kirikos	Leap of Faith Financial Services Inc.	GK
Steven Sun	NA	SS

Section III: Summary of Comments

General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above in the "Important Information Links" section (View Comments Submitted). Comments received after the closing date of 29 April 2019 may not have been included in the summary and analysis of this report.

ICANN org received over 370 comments concerning the proposed renewal of the .biz Registry Agreement. ICANN org appreciates the considerable amount of participation in this proceeding and is grateful to those who provided their feedback and suggestions.

Given the amount of feedback received, it is not practical to capture every comment or theme of agreement, opposition or new ideas. As such, this public comment summary and analysis only identifies areas with a substantial number of similar comments and excludes comments unrelated to the proposed renewal.

A complete list of the public comments received can be found via the View Comments Submitted link.

Comments submitted generally relate to the following themes: (i) removal of the price cap provision, (ii) inclusion of Rights Protection Mechanisms (RPMs), and (iii) the registry agreement renewal process.

The Removal of the Price Cap Provision

A primary concern voiced in the comments was with respect to the proposed removal of the price cap provisions. This provision in the current .biz registry agreement limits the wholesale price of domain name registrations and the allowable price increases for domain name registrations by the registry operator to the registrars. Commenters with this concern largely consisted of individual registrants, individuals writing on behalf of small and self-owned businesses(s) and organizations who serve the interest of registrants.

Commenters provided a variety of reasons for concern about the price cap provision removal. Many commenters indicated the existing pricing protections should remain in part because they believed legacy TLDs are unique and should be treated differently than new gTLDs. They expressed that legacy TLDs, such as .biz, are viewed as a public trust and should be protected and managed as such.

> *"It is important not to change the meaning and expectations surrounding legacy Top Level Domains. Their historical availability and affordability are integral to the democratic spirit of the Internet, and they carry a certain meaning. A promise, so to speak. Other TLDs are not as attractive and do not carry the same democratic promise."* – CKN

Furthermore, commenters indicated that with legacy gTLDs, organizations and individuals who have historically registered domain names did so under the assumption that prices would not suddenly increase. There was also a concern that without price controls, prices to renew domain names could become prohibitively expensive, raising the barrier to entry for individuals and small entities and leading to a negative impact on the .biz TLD registrants. Commenters also brought up the burden and costs associated with moving their web presence to another TLD, which could potentially be capitalized on by the registry operator with higher renewal prices without a price cap.

> *"We do not support lifting existing price caps on annual registration fees for consumers, given the history of these legacy top-level domains and the reasonable pricing expectations of the millions of customers who register and renew domains in these TLDs. While individual domains are typically inexpensive, the costs of switching*

between them for an organization can be exceptionally high. Moving from one TLD to another might require notifying clients, reprinting materials, updating databases, and reconfiguring services. Consequently as consumers are locked in, there either needs to be competition at the registry level, or some form of price constraint." – TC

Additionally, commenters expressed their perception that the .biz TLD's registry operator is inherently positioned as a monopoly, and because of this environment, consumers require regulatory pricing protections.

> *"Legally binding price controls are needed when granting monopoly control over the .biz market. Existing .biz owners cannot simply opt to move their domains to a different TLD without irreparable harm to their small business. They will have no choice but to pay whatever is demanded of them, however unreasonable or unfair."* – DJ

> *"Removing the price cap on legacy gTLDs is an act of regulatory capture, plain and simple. These are non-competitive, monopoly contracts providing internet services with diminishing costs at scale and for years ICANN has allowed them to raise their prices on consumers. The fixed increases were bad enough, but uncapping it and saying the market will decide is dangerous and irresponsible."* – KO

Commenters also conveyed their concern that ICANN org is only acting in the interest of contracted parties by removing the price cap provision. Some suggested that ICANN org may also be benefitting financially from the removal of the price cap provision.

> *"Nothing justifies the transfer of money from hard-working registrants to fatcat registries who simply provide a basic service that costs a minimal amount of money to provide. Please do not pump literally billions of dollars into these companies bank accounts. Registrants will suffer. The registries have a strong financial position and are solidly profitable as is… Consumers around the world are watching these developments with fear as ICANN seems prepared to do whatever the registries want them to do, at the expense of registrants, who are just average people… Consumers around the world need ICANN to look out for their interests too, not just the dot biz, dot org, dot com registries and others financial powerhouses."* – MK

> *"Everyone knows that ICANN is adopting malicious practices against society and dangerous behavior with the sole purpose of generating huge profits for the board and its employees. Removing the price cap on heirloom gTLDs or gTLDs created in the 2000s is a way for ICANN to be able to earn more and satisfy the egos of its directors and employees."* – WP

Commenters also expressed concerns about how the removal of the price cap provision would potentially impact international registrants and communities from developing and underdeveloped regions.

> *"I'm a firm believer in a fair and open internet, and by increasing the cost of domain names many poorer people, or people from poorer parts of the world, will be excluded from participating in the web. The internet should not be another place where only the Rich are allowed. I would hate to see our society loose [sic?] its last place level playing field."* – JL

"I oppose the fact that ICANN wants to remove price caps for .biz domains. Because price increases decrease the possibility of buying domains for those who live in poor countries, for example. Your action stops both the domain and the Internet industry as a whole. Such actions are discriminatory and inadequate." – DD

Comments in favor of the removal of the price cap provision in the .biz Registry Agreement cited the belief that removing price restrictions would lead to a reduction in domain name squatting. They also indicated that ICANN org is not and should not be a price regulator.

"Given the BC's established position that ICANN should not be a price regulator, and considering that ORG, INFO and BIZ are adopting RPMs and other registrant provisions we favor, the BC supports broader implementation of the Base Registry Agreement, including the removal of price controls." – BC

""I think this is a good idea. Something needs to be done to stop Domain name squatters siting on good names for years and demanding outrageous sums for their release and sale. Vastly increasing the prices of domains would go a long way to stopping this practice." – MH

The Inclusion of Rights Protection Mechanisms (RPMs) in legacy gTLDs

Commenters including registrants and organizations who advocate on behalf of registrants expressed concern over the addition of RPMs, including Uniform Rapid Suspension (URS), into legacy gTLD registry agreements on various grounds. Those who were opposed to including the RPMs pointed out that RPMs are not consensus policy for legacy gTLDs, and they believed that incorporating RPMs into legacy gTLD registry agreements should be halted until the RPM working group completes its review of the RPMs and comes to its final recommendations. These commenters also expressed the concern that ICANN org is setting substantive policy for gTLDs by adopting elements of the Base gTLD Registry Agreement into amended and renewed registry agreements for legacy gTLDs.

"ICANN prides itself on bottom-up multi-stakeholder policy development, but yet again, ICANN staff has attempted to circumvent the established policy development process. The Proposed .biz Renewal Agreement includes Uniform Rapid Suspension ("URS") when ICANN Staff are well aware that the question of whether URS should become a Consensus Policy is currently undergoing extensive review by the Rights Protection Mechanism Working Group (the "RPM WG"). In fact, the question of whether URS should be applicable to all gTLD's as a Consensus Policy is one of the primary questions that numerous experts from the ICANN community have been engaged in for the last two years. – ICA

"Given that the RPM PDP of the GNSO is actively reviewing the URS, including determining whether or not it should be a consensus policy, no steps should be taken by ICANN staff and/or the registry operators to unilaterally impose it upon registrants" – GK

Commenters in favor of the adoption of enhanced rights protection mechanisms in the .biz Registry Agreement renewal proposal were encouraged that Registry Services, LLC elected to include the provisions.

> *"The IPC applauds Neustar and other Registry Operators that choose to implement enhanced rights protection mechanisms for third party trademark owners, and to take on enhanced responsibilities for the Registry Operator to prevent use of registrations for abusive purposes, including but not limited to violations of intellectual property rights."* – IPC

The Registry Agreement Renewal Process

Another concern raised by commenters was the process ICANN org has followed to renew legacy registry agreements. Specifically, commenters suggested that a competitive registry operator bidding process should be instated in place of presumptive renewal of the agreement.

> *"ICANN should actively seeking new providers who can lower the cost of the .biz domain names and award the agreement to a winning bidder, for the public's benefit. An open, fair and competitive process should be taken to procure the .biz domain name operator before renewing any agreement."* – SS

Section IV: Analysis of Comments

General Disclaimer: This section intends to provide an analysis and evaluation of the comments submitted along with explanations regarding the basis for any recommendations provided within the analysis.

As the .biz Registry Agreement neared its expiration, ICANN org followed the established practice of offering the Registry Operator the option of migrating to the Base gTLD Registry Agreement for the legacy gTLD. Recent legacy gTLD agreements renewed according to the Base gTLD Registry Agreement include .cat, .jobs, .mobi, .pro, .tel and .travel. ICANN org migrates legacy TLDs to the Base gTLD Registry Agreement as it provides additional safeguards and security and stability requirements which are more robust than what exists in legacy agreements. Additionally, the Base gTLD Registry Agreement lays the framework for consistency for registries, registrars and registrants, and provides for operational efficiencies for ICANN org.

The Removal of the Price Cap Provision

The Base gTLD Registry Agreement does not include price cap provisions which are in the current .biz agreement. The price controls for .biz have been in place since the inception of its ICANN org contract, when the domain name market consisted only of a handful of top-level domains. There are now over 1200 generic top-level domains available, and all but a few adhere to a standard contract that does not contain price regulation. Removing the price cap provisions in the .biz Registry Agreement is consistent with the Core Values of ICANN org as

enumerated in the Bylaws approved by the ICANN community. These values guide ICANN org to introduce and promote competition in the registration of domain names and, where feasible and appropriate, depend upon market mechanisms to promote and sustain a competitive environment in the DNS market.

Aligning with the Base gTLD Registry Agreement would also afford protections to existing registrants. The registry operator must provide six months' notice to registrars for price changes and enable registrants to renew for up to 10 years prior to the change taking effect, thus enabling a registrant to lock in current prices for up to 10 years in advance of a pricing change. Enacting this change will not only allow the .biz renewal agreement to conform to the Base gTLD Registry Agreement, but also takes into consideration the maturation of the domain name market and the goal of treating the Registry Operator equitably with registry operators of new gTLDs and other legacy gTLDs utilizing the Base gTLD Registry Agreement.

ICANN org will consider feedback from the community on this issue.

Registry Fees

ICANN org would also like to clarify a few points raised in the comment forum. The registry fees paid to ICANN org are not directly tied to the domain name registration price. The proposed registry fees include a fixed amount of US$6,250.00 per calendar quarter and a fixed transaction fee of US$0.25 multiplied by the number of annual increments of an initial or renewal domain name registration without regard to the specific pricing of .biz domain name registrations.

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The Registry Agreement Renewal Process

In the registry agreement renewal process, negotiations are initiated between the two contracted parties. ICANN org and the registry operator engage in renewal discussions, where both parties consider whether to renew the agreement in its current form or transition all or part of it to the Base gTLD Registry Agreement. Once the parties are in alignment on the form of agreement, a draft renewal agreement is produced by ICANN org for the review and comment of the registry operator. After both parties agree on the terms of the proposed renewal registry agreement, ICANN org invites the community to comment on the agreement, through the public comment process, in order to collect valuable community input before proceeding. The proposed renewal of the .biz Registry Agreement is a result of this established process. The Base gTLD Registry Agreement, which the proposed .biz Registry Agreement renewal is proposed to align with, was developed with substantial community input via the open and transparent multi-stakeholder approach.

Next Steps

ICANN org will consider the public comments received and, in consultation with the ICANN Board of Directors, make a decision regarding the proposed registry agreement.

Petillion

Annex 8

Reconsideration Request Form

Version as of 21 September 2018

ICANN's Board Accountability Mechanisms Committee (BAMC) is responsible for receiving requests for reconsideration (Reconsideration Request) from any person or entity that has been adversely affected by the following:

> (a) One or more Board or Staff actions or inactions that contradict ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies);
>
> (b) 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
>
> (c) 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.

The person or entity submitting such a Reconsideration Request is referred to as the Requestor.

Note: This is a brief summary of the relevant Bylaws provisions. For more information about ICANN's reconsideration process, please refer to Article 4, Section 4.2 of the ICANN Bylaws and the Reconsideration Website at https://www.icann.org/resources/pages/accountability/reconsideration-en.

This form is provided to assist a Requestor in submitting a Reconsideration Request, and identifies all required information needed for a complete Reconsideration Request. This template includes terms and conditions that shall be signed prior to submission of the Reconsideration Request.

Requestors may submit all facts necessary to demonstrate why the action/inaction should be reconsidered. However, argument shall be limited to 25 pages, double-spaced and in 12-point font. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered, without limitation.

For all fields in this template calling for a narrative discussion, the text field will wrap and will not be limited.

Please submit completed form to reconsideration@icann.org.

1. Requestor Information

Name: Namecheap, Inc. (IANA 1068)

Address: Contact Information Redacted

Email: Contact Information Redacted

Phone Number (optional):

2. Request for Reconsideration of:

___X__ Board action/inaction

___X__ Staff action/inaction

3. Description of specific action you are seeking to have reconsidered.

On 30 June 2019, ICANN org renewed the registry agreement for the .org and .info TLD without the historic price caps, despite universal widespread public comment supporting maintain the price caps. The decision by ICANN org to unilaterally remove the price caps when renewing legacy TLDs with little (if any) evidence to support the decision goes against ICANN's Commitments and Core Values, and will result in harm to millions of internet users throughout the world. ICANN's announcement about this decision is at https://www.icann.org/resources/agreement/org-2019-06-30-en and https://www.icann.org/resources/agreement/info-2019-06-30-en.

4. Date of action/inaction:

30 June 2019

5. On what date did you become aware of the action or that action would not be taken?

1 July 2019

6. Describe how you believe you are materially and adversely affected by the action or inaction:

As a domain name registrar, removal of price caps for legacy TLDs will negatively impact Namecheap's domain name registration business.

Uncertainty regarding future price increases (including the possibility of increases that exceed historical norms) may cause Namecheap's customers to not renew domain names or not register new domain names in legacy TLDs. This may additionally impact other legacy TLDs subject to renewal, such as .com. ICANN org ignored the overwhelming number of public comments supporting maintaining historical price caps, essentially making a mockery of the public comment process.

7. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.

All domain name registrants, especially those who have domains in legacy TLDs with longstanding price caps, will be adversely affected when legacy TLDs begin to raise prices outside of previously established norms. In addition, web developers and internet hosting companies will see decreased sales and revenue. Unrestricted price increases for legacy TLDs will stifle internet innovation, harm lesser served regions and groups, and significantly disrupt the internet ecosystem. An incredible variety of public comments was submitted to ICANN from all continents (except Antarctica) imploring ICANN to maintain the legacy TLD price caps- which were completely discounted and ignored by ICANN org.

8. Detail of Board or Staff Action/Inaction – Required Information

I. Introduction

Namecheap is submitting this reconsideration request to protect the rights and interests of Namecheap's customers and the entire internet community. Price caps for legacy TLDs have been an integral longstanding foundation for the domain name marketplace, and removing them will result in uncertainty and confusion at a minimum, and in the worst case, increased costs for domain name registrants worldwide. ICANN requested public comment regarding the changes to the .org registry agreement, and the response was overwhelmingly against removing price caps. Comments came from small non-profits, international organizations, government agencies, members of government, individuals, families, businesses, entrepreneurs, and people from lesser developed regions and those underrepresented in the ICANN community. ICANN rejected over 3,500 comments against removing price caps by stating registrants could use other TLDs, renew for 10 years if a price increases were excessive, and claiming (without evidence) that market competition would keep the prices for the third largest TLD from rising compared to other TLDs (ignoring the significant differences between .org and new gTLDs raised by commenters). The decision to ignore public comments to keep price caps in legacy TLDs is contrary to ICANN's Commitments and Core Values, and ICANN should reverse this decision for the public good.

II. Basis for the Reconsideration Request

ICANN's bylaws include Commitment 4(A), which states that ICANN will "*seek input from the public, for whose benefit ICANN in all events shall act.*" The bylaws also include the following Core Values:

"*(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"

In line with the Commitments and Core Values, ICANN's Public Comment Opportunities page prominently states:

"Public Comment is a mechanism that gives the ICANN community and other stakeholders an opportunity to provide input and feedback. Public Comment is a key part of the policy development process (PDP), allowing for refinement of recommendations before further consideration and potential adoption. Public Comment is also used to guide implementation work, reviews, and operational activities of the ICANN organization."

https://www.icann.org/public-comments (accessed 3 July 2019)

Specifically, regarding the public comment period for the Proposed Renewal of .org Registry Agreement, ICANN stated:

"Purpose: The purpose of this public comment proceeding is to obtain community input on the proposed .org renewal agreement (herein referred to as ".org renewal agreement").

[…]

Following review of the public comments received, ICANN will prepare and publish a summary and analysis of the comments received. The report will be available for the ICANN Board in its consideration of the proposed .org renewal agreement."

https://www.icann.org/public-comments/org-renewal-2019-03-18-en (accessed 3 July 2019)

In addition to the additional information how ICANN accepts and integrates public comments, for the past few years ICANN org has undertaken efforts to conduct

outreach to domain name registrants and encourage their participation in the ICANN community. Although this can be daunting for non-technical individuals, ICANN org provides good introductory information and in part encourages individuals to provide public comments to ICANN.

ICANN's dedicated section for domain name registrants (https://www.icann.org/registrants), states:

"Throughout all of ICANN's work, we endeavor to serve the global public interest, domain name registrants and end-users of the Internet by ensuring a secure and stable domain name system (DNS), all while promoting trust, choice, and competition in the industry. Domain name registrants are an integral component of the DNS; they are the entities or individuals that have acquired the right to use a domain name for a period of time via an agreement with a registrar or reseller.

[…]

Program Goals

Identifying and raising awareness about issues and challenges that registrants are facing."

- ICANN GDD: Raising Awareness About Registrant Issues and Challenges (presented at ICANN64 https://64.schedule.icann.org/meetings/962101) (accessed 3 July 2019)

The domain name registrants page provides links to encourage registrants to participate in ICANN policy, to provide public comments, and to get involved in the ICANN community.

III. Public comments submitted to ICANN

Namecheap reviewed the approximately 3,538 public comments that were submitted in response to the public comment proceedings for the renewal of the .org and .info registry agreements[1]. An analysis of the data shows that while a large number of commenters were Namecheap customers, a majority were not and represent a varied cross-section of internet users. Some key takeaways include:

1. 725 comments were submitted by Namecheap customers (20% of all comments)

[1] Comments for the renewal of .biz and .asia registry agreements were reviewed, and were similar in content and support of maintaining price caps as the comments for the .org and .info agreements. They are not included in this analysis because many are duplicates comments submitted by the same commenters.

2. 3,474 comments supported maintaining the price caps (98%)

3. 9 comments supported removing the price caps (0.25%)

4. 450 comments were from nonprofits (13%)

5. 1,197 comments were from domain name registrants with domains in the .org, .info, or .biz TLDs (34%)

Many more comments were submitted by domain name registrants. Although it is not possible to accurately determine how many came from registrants, it appears to have been a large majority of commenters.

A number of commenters raised concerns about including the Uniform Rapid Suspension (URS) in the .org registry agreement. Because the URS is being considered in other ICANN forums, Namecheap is not raising this as an issue during this Request for Reconsideration.

The public comments represent a truly global coalition. Although a majority of comments were from North American and Europe, there were comments from Africa, Asia, Australia, and South America. This represents all continents except Antarctica. The comments from Africa were particularly poignant, pleading with ICANN to help maintain a level playing field for them to be able to grow businesses.

Many nonprofits (which will be directly impacted by the removal of the price caps) submitted comments. They represent an incredible diversity of organizations. Below is a summary of the types of organizations that submitted comments, including multiple organizations of the same type. They include:

Advocacy
Aging
Agriculture
Animal Rescue
Arts
Association
Aviation
Charity (20)
Chess
Civic
Club
Community group
Consumer protection
Education (47)
Emergency response

Environmental protection (16)
Government agency (10)
Health
Historical society
Housing
Human Trafficking
Humanitarian
Industry organization
Job support
Justice
Library (6)
Media (4)
Medical (7)
Meditation
Mentoring
Model train
Motorcycle club
Music (8)
Networking
Open source software
Policy
Poverty
Professional
Publishing
Religious (69)
Research
Sailing
Science
Scouting
Service
Social
Software
Sports
Suicide prevention
Support
Support for the disabled (4)
Surgeons

Technology
Theater
Trade group
Trade organization
Transportation
Veterans support
Voting rights
Wellness
Youth

Contained within the comments are appeals to maintain price caps to ensure the survival of organizations that have extremely limited resources:

> "[removing the price cap] will negatively affect nonprofit organizations who struggle to survive as it is"
>
> "A rise in any administrative costs means I give less money to sick and disabled children."
>
> "Every dollar you take from us doesn't get to the people who need it."
>
> "A significant increase in the price of our domain would diminish our ability to offer these benefits and threaten our survival."
>
> "Why, in God's name, would anyone decide that .org domains in particular should be a market free-for-all?"
>
> "Every $1 in increased prices on the 10+ million .org domain users would generate more revenue each year than is utilized by all but the top one-percent of charitable nonprofits. Each one-dollar hike in costs per domain would divert more than $10 million from nonprofit missions for the enrichment of the monopoly. By anyone's estimate, this money would be better spent delivering an additional 1,600,000 meals by Meals on Wheels to seniors to help maintain their health, independence and quality of life. Or $10 million could enable nonprofits to provide vision screenings for every two- and three-year-olds in California. Or pay for one million middle school students to attend performances of "Hamilton" or "To Kill a Mockingbird". Nonprofits should not need to choose between paying for a domain name and helping people."

Some of the nonprofits that submitted comments provide truly vital services, helping the most disadvantaged people in the world. This includes organizations that:

- combat human trafficking

- work with indigenous and aboriginal communities in lesser developed regions,

- help prevent suicide

- provide resources for sick and disabled children

- provide support for people with life-threatening medical conditions

- provide food, shelter, and education to orphan children in Africa

- provide free VPN service for areas that struggle with government censorship of the internet

- help farmers in South America expand their businesses

When reviewing all of the comments, some common themes were provided by a number of commenters:

- using a .org domain name is critical to their nonprofit: it is well-known, safe, and trusted.

- many have been using their .org domain for many years, and the cost and risk of moving to another TLD (e.g. losing search engine rankings, notifying the public of the new TLD, etc) causes great concern.

- they do not want to use another TLD, because .org is known to be for nonprofits. There are no equivalent TLDs that have the established reputation of .org.

- if prices increase too much, they might abandon using a domain name in order to migrate to another platform that is outside of ICANN's remit (and would include price certainty). This includes relying solely upon social media or mobile apps.

- there was concern that ICANN was captured by Public Interest Registry (PIR), in that the removal of the price cap only benefits PIR and not registrants in .org or the internet in general.[2]

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[2] Namecheap notes that under the base registry agreement that now covers .org, .info, and other legacy TLDs, registry operators may actually pay **more** fees to ICANN than under the previous agreements. The base agreement includes quarterly fees due to ICANN of US$6,250 (plus US$0.25 per domain transaction fee). See Section 6.1 of the registry agreement. The quarterly fee was not present in the prior registry agreements. It is telling that while under the current budget pressure, ICANN did not highlight the additional US$25,000 that each registry operator would have to pay to ICANN annually under the new agreements (and did not consider

- questions why unrestricted price increases should be considered because at this point PIR is maintaining the .org registry and not undertaking development initiatives that would require additional resources.

- concern that removing the price cap for .org would also lead to removing the price cap for the .com registry agreement (which is subject to renewal in 2024, is the largest TLD by far, and because it is commercial in nature, is more likely to lead to price increases).

IV. ICANN org's response to public comments

In ICANN org's analysis of the public comments, ICANN rejects all of the comments against removing the price cap with a conclusory statement that is devoid of any supporting evidence:

"There are now over 1200 generic top-level domains available, and all but a few adhere to a standard contract that does not contain price regulation. Removing the price cap provisions in the .org Registry Agreement is consistent with the Core Values of ICANN org as enumerated in the Bylaws approved by the ICANN community. These values guide ICANN org to introduce and promote competition in the registration of domain names and, where feasible and appropriate, depend upon market mechanisms to promote and sustain a competitive environment in the DNS market."

https://www.icann.org/en/system/files/files/report-comments-org-renewal-03jun19-en.pdf (accessed 3 July 2019)

ICANN then goes on to state that any price increases would require 6 months advance notice and that registrants could renew domains for 10 years at that point.

The generalizations in ICANN org's analysis ignores significant information that is contrary to its sweeping conclusions:

1. The TLD .org is the 3rd largest, with over 10 million domains. This is the equivalent number as the top 10 new gTLDs by volume. The TLD .org thus commands a large share of the TLD space, and as suggested by the Registrar Stakeholder Group (RrSG) comment, additional analysis is needed to determine whether this market share can result in uncompetitive practices.

2. The TLD .org was established in 1985. It is universally known, associated with nonprofit use, and has an excellent reputation.

3. Changing domains for an established entity can be a cumbersome and costly

---

how registry operators would either absorb this cost or pass this cost to registrars or domain name registrants).

process, often with negative results (inability to connect with users, loss of search engine positions, confusion over validity of new domain, etc). Many would rather stay with an established domain (and the associated goodwill).

4. TLDs are not interchangeable as ICANN states. While there may be 1,200 other gTLDs to choose from, many of the new gTLDs are closed and not usable by nonprofits (e.g. trademarks, geographic, restricted for certain uses). Additionally, a number of TLDs are whimsical (e.g. .rocks or .ooo) or targeted to certain uses (e.g. .horse or .motorcycles) and cannot be used by nonprofits or businesses. It would be desirable for ICANN to identify which new gTLDs might be acceptable replacements to .org.

5. While there are additional TLDs for nonprofits (launched beginning in 2015 by PIR), there are few registrations in those TLDs (perhaps demonstrating that nonprofits do not want an alternative to .org). According to ICANN's monthly reports for March 2019 (at https://www.icann.org/resources/pages/registry-reports), the TLDs have the following domain totals:

.ngo[3]: 3,812

.ong[4]: 3,812

.संगठन (.xn--i1b6b1a6a2e)[5]: 1,323

.机构 (.xn--nqv7f)[6]: 1,291

.opr (.xn--c1avg)[7]: 2,317

6. There are some concerns higher levels of abuse exists in new gTLD domains (which decreases the value of new gTLDs in general). This includes (but is not limited to) higher levels of spam (https://www.techrepublic.com/article/rampant-spam-falling-registrations-show-new-gtlds-have-limited-business-value/). Additionally, ICANN's own analysis shows greater levels of abuse in new gTLDs compared to legacy TLDs: while new gTLDs represent 12% of total domains, they comprise 52% of domains identified with security threats (see ICANN DAAR report from January 2019 at https://www.icann.org/en/system/files/files/daar-monthly-report-31jan19-en.pdf).

7. Universal acceptance (UA)- including for new gTLDs- continues to be a high

[3] NGO stands for "non-governmental organization"
[4] ONG is the equivalent of NGO in some languages including French, Spanish, and Portuguese (https://pir.org/pir-files-applications-to-create-and-manage-ngo-and-ong-domains/)
[5] the equivalent of .org in Devanagari
[6] the equivalent of .org in Chinese
[7] the equivalent of .org in Russian

priority for ICANN org. ICANN's Board has made improving and promoting UA and Internationalized Domain Name (IDN) implementation one of five strategic priorities for FY21-FY25. (https://uasg.tech/2018/12/icann-further-commits-to-universal-acceptance-of-domain-names-and-email-addresses/). Due to issues with universal acceptance, it is possible that new gTLDs will not be usable in internet browsers, mobile devices, or email systems- all which greatly diminish the ability for nonprofits to switch to a new gTLD for their main domain name.

V. Conclusion

ICANN's Commitment claims that it will seek input from the public, and always act in the benefit of the public. ICANN's Core Values allege that ICANN will seek to determine the global public interest to strike a balance and avoid capture. Additionally, ICANN appears to use the public comment process to obtain community feedback for items such as the renewal of legacy TLD registry agreements, and states that such comments will be considered and incorporated into ICANN actions. Furthermore, ICANN org actively encourages regular internet users to be involved in such processes.

Based upon ICANN org's action in the renewal of the .org and other legacy TLD registry agreements, it is clear that ICANN has failed to abide by its Commitment, Core Values, and public statements. The ICANN org will decide whether to accept or reject public comment, and will unliterally make its own decisions- even if that ignores the public benefit or almost unanimous feedback to the contrary, and is based upon conclusory statements not supported by evidence. This shows that the public comment process is basically a sham, and that ICANN org will do as it pleases in this and other matters. It is a concern not only for the renewal of the .org and other legacy TLD registry agreements being renewed in 2019, but an even greater concern for the upcoming renewal of the .com registry agreement- as well as other vital policy issues under consideration by ICANN now and in the future.

It is disappointing that when internet users got involved on a massive scale in ICANN processes, ICANN failed its Commitments and Core Values by completely rejecting their feedback. ICANN org should revise all legacy TLD registry agreements to include the now missing price caps, otherwise it is clear that ICANN does not follow its Commitments, Core Values, nor does it serve the greater public good.

9. What are you asking ICANN to do now?

Namecheap requests that ICANN org and the ICANN Board reverse its decision and include (or maintain) price caps in all legacy TLDs.

10. Please state specifically the grounds under which you have the standing and the right to assert this Reconsideration Request, and the grounds or justifications that support your request.

Namecheap is an ICANN-accredited domain name registrar, and as indicated above, unrestricted price increases will have a direct impact on Namecheap's domain registration business as well as additional services (e.g. domain hosting). Namecheap is additionally filing this Reconsideration Request on behalf of the 725 Namecheap customers and internet users that submitted public comments stating how they will be harmed by removing the price cap, and who all likely lack the knowledge about ICANN processes to submit their own Reconsideration Requests. All of Namecheap's customers, as well as the internet community as a whole, will be harmed by uncertainty of price increases, or will be further harmed when prices increase for .org or other legacy TLDs after price caps are removed.

Maintaining the historical price caps will ensure that prices for .org and other legacy TLDs will be predictable and not harm the greater internet population.

11. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)

X Yes

No

11a. If yes, is the causal connection between the circumstances of the Reconsideration Request and the harm substantially the same for all of the Requestors? Explain.

Although the resulting impact will be different for Namecheap and domain name registrants, all of them will be negatively impacted by the uncertain threat of price increases without price caps, or will be actually harmed when prices increase in .org and other legacy TLD once price caps are removed.

12. Are you bringing this Reconsideration Request on an urgent basis pursuant to Article 4, Section 4.2(s) of the Bylaws?

Yes

X No

12a. If yes, please explain why the matter is urgent for reconsideration.

13. Do you have any documents you want to provide to ICANN?

No.

Terms and Conditions for Submission of Reconsideration Requests

Reconsideration Requests from different Requestors may be considered in the

same proceeding so long as: (i) the requests involve the same general action or inaction; and (ii) the Requestors are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is substantially the same for all of the Requestors. Every Requestor must be able to demonstrate that it has been materially harmed and adversely impacted by the action or inaction giving rise to the request.

The BAMC shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The BAMC may summarily dismiss a Reconsideration Request if: (i) the Requestor fails to meet the requirements for bringing a Reconsideration Request; or (ii) it is frivolous. The BAMC's summary dismissal of a Reconsideration Request shall be documented and promptly posted on the Reconsideration Website at https://www.icann.org/resources/pages/accountability/reconsideration-en.

Hearings are not required in the Reconsideration Process; however, Requestors may ask for the opportunity to be heard. The BAMC retains the absolute discretion to determine whether a hearing is appropriate, and to call people before it for a hearing. The BAMC's decision on any such request is final.

For all Reconsideration Requests that are not summarily dismissed, except where the Ombudsman is required to recuse himself or herself and Community Reconsideration Requests, the Reconsideration Request shall be sent to the Ombudsman, who shall promptly proceed to review and consider the Reconsideration Request. The BAMC shall make a final recommendation to the Board with respect to a Reconsideration Request following its receipt of the Ombudsman's evaluation (or following receipt of the Reconsideration Request involving those matters for which the Ombudsman recuses himself or herself or the receipt of the Community Reconsideration Request, if applicable).

The final recommendation of the BAMC shall be documented and promptly (i.e., as soon as practicable) posted on the Reconsideration Website at https://www.icann.org/resources/pages/accountability/reconsideration-en and shall address each of the arguments raised in the Reconsideration Request. The Requestor may file a 10-page (double-spaced, 12-point font) document, not including exhibits, in rebuttal to the BAMC's recommendation within 15 days of receipt of the recommendation, which shall also be promptly (i.e., as soon as practicable) posted to the ICANN Reconsideration Website and provided to the Board for its evaluation; provided, that such rebuttal shall: (i) be limited to rebutting or contradicting the issues raised in the BAMC's final recommendation; and (ii) not offer new evidence to support an argument made in the Requestor's original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request.

The ICANN Board shall not be bound to follow the recommendations of the BAMC. The ICANN Board's decision on the BAMC's recommendation is final

and not subject to a Reconsideration Request.

By submitting my personal data, I agree that my personal data will be processed in accordance with the ICANN Privacy Policy, and agree to abide by the website Terms of Service.

Signature

07/12/2019
Date

Richard Kirkendall
Print Name

Petillion

Annex 9

Reconsideration Request Form

Version as of 21 September 2018

ICANN's Board Accountability Mechanisms Committee (BAMC) is responsible for receiving requests for reconsideration (Reconsideration Request) from any person or entity that has been adversely affected by the following:

> (a) One or more Board or Staff actions or inactions that contradict ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies);
>
> (b) 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
>
> (c) 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.

The person or entity submitting such a Reconsideration Request is referred to as the Requestor.

Note: This is a brief summary of the relevant Bylaws provisions. For more information about ICANN's reconsideration process, please refer to Article 4, Section 4.2 of the ICANN Bylaws and the Reconsideration Website at https://www.icann.org/resources/pages/accountability/reconsideration-en.

This form is provided to assist a Requestor in submitting a Reconsideration Request, and identifies all required information needed for a complete Reconsideration Request. This template includes terms and conditions that shall be signed prior to submission of the Reconsideration Request.

Requestors may submit all facts necessary to demonstrate why the action/inaction should be reconsidered. However, argument shall be limited to 25 pages, double-spaced and in 12-point font. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered, without limitation.

For all fields in this template calling for a narrative discussion, the text field will wrap and will not be limited.

Please submit completed form to reconsideration@icann.org.

1. Requestor Information

Requestor is:

Name: Namecheap, Inc. (IANA 1068)

Address: Contact Information Redacted

Email: Contact Information Redacted

Requestor is represented by:

Name: Flip Petillion, Jan Janssen, PETILLION

Address: Contact Information Redacted

Email: Contact Information Redacted

Phone Number: Contact Information Redacted

2. Request for Reconsideration of:

___x___ Board action/inaction

___x___ Staff action/inaction

3. Description of specific action you are seeking to have reconsidered.

On 30 June 2019, ICANN org renewed the registry agreements ("RAs") for the .ORG, .INFO and .BIZ gTLDs without maintaining the historic price caps, despite universal widespread public comment supporting that the price caps be maintained. This controversial decision goes against the interests of the Internet community as a whole and violates various provisions aimed at protecting those interests set forth in ICANN's Articles of Incorporation, Bylaws, policies, and the renewal terms of the RAs.

Relatively soon after the renewal of the .org RA between ICANN and PIR, the Internet Society (ISOC) and Public Interest Registry (PIR) announced that PIR was sold to the investment firm Ethos Capital for an undisclosed sum of money. The change of control with PIR in conjunction with the removal of the price caps is particularly damaging to the interests of the Internet community.

ICANN's involvement in the acquisition of PIR by Ethos Capital is unclear at this stage. It is also uncertain whether or not the change of control of PIR has effectuated, and whether or not, and to what extent, ICANN has scrutinized the transaction. On 9 December 2019, ICANN's President and CEO and the ICANN Board Chair declared on ICANN's official website that they want to be transparent about where they are in the process. We learn from this communication that, apparently, PIR notified ICANN of the proposed transaction on 14 November 2019 and that ICANN has asked PIR to provide information related to (i) the continuity of the operations of the .ORG registry, (ii) the nature of the proposed transaction, (iii) how the proposed new ownership structure would continue to adhere to the terms of the current agreement with PIR, and (iv) how they intend to act consistently with their promises to serve the .ORG community with more than 10 million domain name registrations. ICANN submits that it will thoroughly evaluate the responses and then has 30 additional days to provide or withhold its consent to the request. ICANN urged PIR, ISOC, and Ethos Capital to act in an open and transparent manner throughout this process and made clear that it would evaluate the proposed acquisition to ensure that the .ORG registry remains secure, reliable, and stable. While the Requestor applauds ICANN for

acknowledging the concerns that were raised by the Internet community, ICANN's actions are insufficient to ease those concerns and maintain trust in the .ORG community and ICANN's stewardship of the DNS.

4. Date of action/inaction:

The date of the actions and inactions that the Requester is seeking to have reconsidered is unclear. On 9 December 2019, ICANN made clear that PIR had declined ICANN's request to publish PIR's notification relating to the proposed acquisition of PIR. ICANN reiterated its request and expressed the belief that it is imperative that ISOC and PIR commit to completing the "process" in an open and transparent manner, staring with publishing the notification and related material, and allowing ICANN to publish their questions to PIR/ISOC and PIR/ISOC's full responses.

Hence, on 9 December 2019, it became clear that ICANN would not be completely open and transparent about the process *proprio motu*.

5. On what date did you become aware of the action or that action would not be taken?

The Requestor learned about ICANN's actions and inactions on 11 December 2019, *i.e.*, two days after ICANN posted the declaration of its President & CEO and the ICANN Board Chair on its website.

6. Describe how you believe you are materially and adversely affected by the action or inaction:

Requestor is adversely affected by ICANN's failure to act appropriately

upon the (proposed) shift of ownership of the registry operator for .ORG from a non-profit organisation to a for profit investor in conjunction with the removal of price caps in .ORG in. These actions and inactions are likely to have an impact on the Requestor's business.

Even if registrars such as Requestor are given an opportunity to freeze the price for domain name registration renewals by renewing domain names for a period of ten years, this may have an important budgetary impact on Requestor and their customers. Internal budget planning policies of Requestor and its customers may not allow making such long-term decisions and important expenses. Moreover, uncertainty regarding future price increases (including the possibility of increases that exceed historical norms) may cause Requestor's customers not to renew domain names or not to register new domain names in legacy TLDs (.ORG, .INFO and .BIZ).

Allowing individual registry operators to modify key conditions of registry agreements and/or the modification of their ownership leads to far-reaching new rules and non-transparent policies to the sole benefit of a single commercial entity, without granting the Internet community and those entities most affected with a useful and meaningful opportunity to assist in the policy development process. Allowing such radical changes in undocumented and/or non-transparent processes undermines ICANN's multistakeholder model and the GNSO policy development process. These radical changes have immediate repercussions upon the Requestor's business, as it significantly affects the level of trust of customers in the domain name industry. Customer-facing entities, such as the Requestor, are the ones that are most exposed to

the harmful effects of declining levels of trust.

7. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.

All domain name registrants, especially those who have domain names in legacy TLDs[1] with longstanding price caps, will be adversely affected if ICANN not only allows legacy TLDs to raise prices outside of previously established norms, but also engages in a non-transparent and largely undocumented process that may lead to fundamental changes in the ownership of the registry operator and the operation of the TLD.

ICANN's failure to take due account of public comments with respect to the renewal of the .ORG registry agreement and to respond appropriately and transparently to PIR/ISOC's request for approval of the proposed acquisition of PIR calls into question ICANN's objectivity and violates the commitment to openness and transparency articulated in ICANN's Bylaws and Affirmation of Commitments. If ICANN allows the process for approving *casu quo* withholding its approval of the proposed acquisition to run in a non-transparent and closed fashion, what is to stop it from keeping all major decisions and considerations behind closed doors? This causes significant material harm to the Internet community as a whole, who will be unsure of ICANN's objectivity or commitment to abide by its own rules and regulations.

[1] Requestor refers to legacy TLDs when referring to the original gTLDs and those gTLD that have been delegated in accordance with the Proof-of Concept round or the 2004 Sponsored TLD round. Non-legacy TLDs are those gTLDs that were delegated in accordance with the New gTLD Program.

8. Detail of Board or Staff Action/Inaction – Required Information

- Failure to meet ICANN's openness and transparency obligations

In its communication to PIR/ISOC, ICANN correctly states that "*transparency is a cornerstone of ICANN and how ICANN acts to protect the public interest while performing its role.*" However, ICANN is not handling its transparency obligations accordingly. Instead of being completely open and transparent about the process for handling PIR's request relating to the proposed acquisition of PIR and the consequences for the operation of the .ORG registry, ICANN has yet to make public (i) PIR's request, (ii) ICANN's communications responding to this request, (iii) the questions ICANN purportedly asked to PIR, ISOC and/or Ethos Capital, (iv) the answers ICANN received to those questions, (v) the criteria ICANN intends to use for evaluation PIR's request, and (vi) any other materials related to the above.

From its letter of 9 December 2019, it seems that ICANN is asking permission from PIR/ISOC to publish PIR's request and answer to ICANN's questions. It even seems that ICANN is asking some sort of commitment by PIR/ISOC that should allow ICANN to publish ICANN's questions to PIR/ISOC and PIR/ISOC's full responses.

The Requestor fails to see why ICANN asks, or should ask, any kind of permission to publish these documents. In the assumption that the renewed Registry Agreement for .ORG applies – the unconditional application of this agreement is being challenged by the Requestor and others in parallel proceedings – Section 7.15 of this renewed agreement provides that only information that *is* confidential trade secret, confidential commercial

information or confidential financial information *can* be confidential information to the extent it has been marked as such. Neither the previous Registry Agreement for .ORG, nor the renewed Registry Agreement for .ORG provide for confidentiality in renewal negotiations or in processes related to a proposed change of control.

Questions that ICANN asks to PIR/ISOC by no means qualify as confidential information. ICANN needs no permission from PIR/ISOC or any third party to publish those questions. The contrary is true: ICANN's openness and transparency obligations mandate ICANN to publish its questions, to employ open and transparent processes, and to be open and transparent to the maximum extent feasible.

Hence, instead of expressing its beliefs and instead of simply urging PIR/ISOC to be more transparent, ICANN can – and should – require that PIR/ISOC responds to ICANN's questions publicly.

After all, PIR/ISOC have been delegated the responsibility to operate one of the Internet's crucial assets, the .ORG registry.

- Failure to apply its standards, policies, procedures, and practices equitably and non-discriminatorily, thereby acting in a manner that does not comply with and does not reflect and respect ICANN's Commitments and Core Values

The process for assigning the operation of the .ORG registry to

PIR/ISOC was the result of careful policy development by the DNSO[2] and an evaluation process to select the registry operator that best met the evaluation criteria, developed by the Internet community. The DNSO created the policy for the reassignment of the .ORG registry and was involved in the evaluation. The policy for the operation of the .org registry required *inter alia* that (i) the registry be "operated for the benefit of the worldwide community of organizations, groups, and individuals engaged in noncommercial communication via the Internet", (ii) responsibility for the .org administration be "delegated to a non-profit organization that has widespread support from and acts on behalf of that community", and (iii) registry fee charged to accredited registrars be "as low as feasible consistent with the maintenance of good quality service".[3] The DNSO's policy on the reassignment and administration of the .ORG registry has never been amended nor revoked.

The abovementioned requirements of the DNSO's policy have been taken up in the criteria for assessing proposals from organizations that sought to become the operator of the .ORG registry. These evaluation criteria set forth *inter alia* that (i) the registry operator's policies and practices "should strive to be responsive to and supportive of the noncommercial Internet user community", (ii) "ICANN will place significant emphasis on the demonstrated ability of the applicant or a member of the proposing team to operate the TLD registry of significant scale in a manner that provides affordable services with

[2] The DNSO or the "Domain Name Supporting Organization" was one of organizations within ICANN that develop and recommend policies concerning the Internet's technical management within their areas of expertise. The DNSO developed policies relating to the domain name system (DNS). The DNSO is the precursor of the GNSO or the "Generic Names Supporting Organization", ICANN's policy development body for generic top-level domains.
[3] *See* ICANN, Report of the Dot Org Task Force Adopted by the DNSO Names Council 17 January 2002 and accepted as guidance by the ICANN Board on 14 March 2002.

a high degree of service responsiveness and reliability", (iii) "[d]emonstrated support among registrants in the .org TLD, particularly those actually using .org domain names for noncommercial purposes, will be a factor in evaluation of the proposals", (iv) "proposals to operate the .org TLD should provide available evidence of support from across the global Internet community", (v) a "significant consideration will be the price at which the proposal commits to provide initial and renewal registrations and other registry services"; the registry fee should be "as low as feasible consistent with the maintenance of good-quality service".[4]

Hence the reassignment of .ORG to PIR/ISOC was not open-ended. Clear and unequivocal commitments were made by PIR/ISOC, who received an endowment of US$ 5 million in exchange to operating as a non-profit and its commitment of making the .ORG registry the "true global home of non-commercial organizations on the Internet."

ICANN is correct in stating that the Registry Agreement requires a standard of reasonableness to make its determination to provide or withhold its consent to the proposed acquisition of PIR. ICANN announced that it will thoughtfully and thoroughly evaluate the proposed acquisition to ensure that the .ORG registry remains secure, reliable, and stable. However, it is unclear how ICANN will interpret these evaluation criteria. Unless the Internet community develops a specific policy for evaluating the proposed acquisition, the criteria should comprise the policy and the evaluation criteria that were developed for the reassignment of .ORG. "Reliability" includes that the

[4] ICANN, *Reassignment of .org Top-Level Domain: Criteria for Assessing Proposals*, posted 20 May 2002.

proposed transition does not affect any of the commitments made by PIR/ISOC when they were awarded the stewardship over the .ORG registry. “Stability” implies that registration and renewal prices must remain stable and “as low as feasible consistent with the maintenance of good quality service”. Stability also means that the governance structure of the .ORG registry is not dramatically changed and provides for sufficient mechanisms and participatory processes for .ORG stakeholders to protect their interests. ICANN should seek to it that strong foundations remain for the “global home of non-commercial organizations on the Internet” which the .ORG registry is.

By allowing for the elimination of price caps in .ORG, ICANN has already failed to apply its policies equitably. By removing the price caps, ICANN has allowed for unstable registration and renewal prices and contravenes established policy that these prices must be as low as feasible consistent with the maintenance of good quality service. This policy violation would only be exacerbated if ICANN were to allow PIR be acquired by a for-profit company.

9. What are you asking ICANN to do now?

The Requestor is asking that ICANN reconsider the lack of openness and transparency with respect to the renewal of the .ORG Registry Agreement[5] and the actions surrounding the (proposed) acquisition of PIR

[5] As a matter of fact ICANN should reconsider the lack of openness and transparency with respect to the renewal of the Registry Agreements for all legacy TLDs, including .INFO and .BIZ, as was previously asked for, as part of the request that the ICANN Board include or maintain price caps in all legacy TLDs.

and ICANN's approval process. To the extent ICANN's actions and/or inactions lead, have led to, or risk leading to the approval of the change of control, the Requestor is seeking to have those actions and inactions reconsidered with a view to preserving the non-profit character of .ORG, and observing the criteria that have led to the reassignment of the .ORG registry to PIR/ISOC.

Based on the information that is publicly available regarding the proposed acquisition of PIR, the Requester considers that there are sufficient grounds which mandate ICANN to withhold its approval.

The Requestor asks that ICANN reverse its decision to eliminate price caps in the .ORG TLD and that it includes (or maintains) price caps in the .ORG TLD.[6]

The Requestor asks that ICANN ensures that domain name registration and renewal fees in .ORG are "as low as feasible consistent with the maintenance of good quality service". To the extent PIR cannot live up to its commitments made during the reassignment process for the .ORG registry, the Requestor asks that ICANN reassigns the .ORG registry in accordance with the DNSO policy for reassignment (unless the community comes up with an updated policy).

In the event that ICANN does not immediately grant this request, the

[6] As a matter of fact, ICANN should reverse its decision to eliminate price caps in legacy TLDs and includes (or maintains) price caps in all legacy TLDs (including .ORG, .INFO, and .BIZ). Requestor is aware that this request is currently being discussed in the framework of a cooperative engagement process, but Requestor wants to give the ICANN Board the opportunity to reconsider its decision in view of the recent events with respect to .ORG.

Requestor asks that ICANN engage in conversations with the Requestor and that a hearing be organized. In such event, the Requestor requests that, prior to the hearing, ICANN (i) provides full transparency regarding negotiations pertaining to the reassignment, renewal and amendments of the .ORG, .BIZ and/or .INFO Registry Agreements, (ii) provides full transparency regarding the (proposed) change of control of Public Interest Registry, and (iii) provides the documents requested in today's DIDP request by the Requestor.

10. Please state specifically the grounds under which you have the standing and the right to assert this Reconsideration Request, and the grounds or justifications that support your request.

The Requestor is an ICANN-accredited registrar. As indicated above, the Requestor is adversely affected by the removal of price caps in .ORG in conjunction with ICANN's failure to act appropriately upon the (proposed) shift of ownership of the registry operator for .ORG from a non-profit organisation to a for profit investor. These actions and inactions are likely to have an impact on the business (domain name registration business as well as additional services, such as domain name hosting). More than 700 of the Requestor's customers have submitted public comments stating how they will be harmed by removing the price caps. All of the Requester's customers, as well as the Internet community as a whole, are harmed by the uncertainty about both (i) possible price increases in legacy TLDs, and (ii) ICANN and the registry operator of .ORG observing the commitments that are made for operating the .ORG registry.

Through its actions and inactions, ICANN is allowing individual registry

operators to modify key aspects of registry agreements and/or their ownership without the necessary openness and transparency. If ICANN fails to remedy this situation, this will inevitably lead to the creation far-reaching new rules and non-transparent policies to the sole benefit of a single commercial entity, without granting the Internet community and those entities most affected with a useful opportunity to assist in the policy development process. Allowing such radical changes in undocumented and/or non-transparent processes undermines ICANN's multistakeholder model and the GNSO policy development process.

11. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)

Yes

x No

11a. If yes, is the causal connection between the circumstances of the Reconsideration Request and the harm substantially the same for all of the Requestors? Explain.

12. Are you bringing this Reconsideration Request on an urgent basis pursuant to Article 4, Section 4.2(s) of the Bylaws?

Yes

x No

12a. If yes, please explain why the matter is urgent for reconsideration.

13. Do you have any documents you want to provide to ICANN?

At this stage, all relevant documents are believed to be in ICANN's possession. For ICANN's convenience, we have attached today's DIDP request by the Requestor as **Annex 1**.

Terms and Conditions for Submission of Reconsideration Requests

Reconsideration Requests from different Requestors may be considered in the same proceeding so long as: (i) the requests involve the same general action or inaction; and (ii) the Requestors are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is substantially the same for all of the Requestors. Every Requestor must be able to demonstrate that it has been materially harmed and adversely impacted by the action or inaction giving rise to the request.

The BAMC shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The BAMC may summarily dismiss a Reconsideration Request if: (i) the Requestor fails to meet the requirements for bringing a Reconsideration Request; or (ii) it is frivolous. The BAMC's summary dismissal of a Reconsideration Request shall be documented and promptly posted on the Reconsideration Website at https://www.icann.org/resources/pages/accountability/reconsideration-en.

Hearings are not required in the Reconsideration Process; however, Requestors may ask for the opportunity to be heard. The BAMC retains the absolute discretion to determine whether a hearing is appropriate, and to call people before it for a hearing. The BAMC's decision on any such request is final.

For all Reconsideration Requests that are not summarily dismissed, except where the Ombudsman is required to recuse himself or herself and Community Reconsideration Requests, the Reconsideration Request shall be sent to the Ombudsman, who shall promptly proceed to review and consider the Reconsideration Request. The BAMC shall make a final recommendation to the Board with respect to a Reconsideration Request following its receipt of the Ombudsman's evaluation (or following receipt of the Reconsideration Request involving those matters for which the Ombudsman recuses himself or herself or the receipt of the Community Reconsideration Request, if applicable).

The final recommendation of the BAMC shall be documented and promptly (i.e., as soon as practicable) posted on the Reconsideration Website at https://www.icann.org/resources/pages/accountability/reconsideration-en and shall address each of the arguments raised in the Reconsideration Request. The Requestor may file a 10-page (double-spaced, 12-point font) document, not including exhibits, in rebuttal to the BAMC's recommendation within 15 days of receipt of the recommendation, which shall also be promptly (i.e., as soon as practicable) posted to the ICANN Reconsideration Website and provided to the Board for its evaluation; provided, that such rebuttal shall: (i) be limited to rebutting or contradicting the issues raised in the BAMC's final recommendation; and (ii) not offer new evidence to support an argument made in the Requestor's original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request.

The ICANN Board shall not be bound to follow the recommendations of the BAMC. The ICANN Board's decision on the BAMC's recommendation is final and not subject to a Reconsideration Request.

By submitting my personal data, I agree that my personal data will be processed in accordance with the ICANN Privacy Policy, and agree to abide by the website Terms of Service.

Date: 8 January 2020

Flip Petillion

Jan Janssen

Petillion

Annex 10

I. Introduction

The Requestor, Namecheap Inc., submits this Rebuttal to the ICANN Board's Proposed Determination on Reconsideration Request (RfR) 19-2 (the 'Recommendation'). The Recommendation concerns Requestor's request that the Board reverse ICANN org and the ICANN Board decision of 30 June 2019 to renew the registry agreement for the .org and .info TLDs without the historic price caps (the 'Decision').

As Requestor explains in this Rebuttal, ICANN's Decision and the Board's Recommendation have been made (i) in disregard of ICANN's fundamental rules and obligations, (ii) on the basis of an incomplete and non-transparent record. First, ICANN's reliance upon Professor Carlton's 2009 analysis is misguided because it is an opinion not based upon evidence or facts, but relies upon outdated and incomplete assumptions. Second, ICANN claims that the Base RA was developed through the ICANN policy process, however there is no evidence to suggest that those participants intended or considered the Base RA to apply to legacy TLDs (rather it was clear the intent was to develop an agreement for new gTLD registries only). Third, ICANN's failure to incorporate essentially unanimous public comments in support of price caps shows that ICANN will do as it pleases regardless of whether it solicits public comments. And finally, the recent purchase of Public Interest Registry (PIR), the operator of the .org TLD by an equity firm and its subsequent conversion into a for profit, along with the intermingling of ex-ICANN executives and industry insiders requires that ICANN review this purchase in detail and take necessary steps to ensure that .org domains are not used a source of revenue to support expansion by PIR or payment of dividends to PIR's shareholders (which are against the original nonprofit origins of the .org TLD). The .org and .info TLDs are unlike new gTLDs. Treating like cases alike and unlike cases differently is a general axiom of rational

behavior. This axiom is an absolute requirement to comply with ICANN's fundamental obligation to provide for non-discriminatory treatment.

II. Professor Carlton's 2009 "Analysis"

ICANN's determination relies substantially upon the Preliminary Analysis of Dennis Carlton Regarding Price Caps for New gTLD Internet Registries to support the removal of price caps from the Base RA as well as the registry agreements for legacy TLDs. ICANN's reliance is flawed for several reasons. First, the document is more opinion than a fact-based analysis. A review of the document fails to identify any data sources or references to support the sweeping opinions of the author- including but not limited to data pertaining to domain name registrant behavior, the degree of fungibility between gTLDs, or considering the entire DNS (including ccTLDs and underserved regions). Second, Prof. Carlton concludes in ¶ 5 that "…price caps … [for] **new gTLD registries** are unnecessary to insure competitive benefits … for introducing new gTLDs." Nowhere does the analysis consider removing price caps for legacy TLDs, and it states in ¶ 20 that "...**the existence of the caps [in legacy TLDs] limits the prices** that new gTLDs can charge by capping the price that the major registry operators can charge." Third, the DNS has changed significantly from June 2008 data cited in his report- rendering it antiquated and stale. In addition, the analysis was narrowly focused on gTLDs, completely ignoring a significant sector of the DNS: ccTLDs. The complete DNS data for Q2 2008 and Q2 2019 are included in Exhibit A, and demonstrate the significant changes to the DNS since 2008.

The analysis was subject to public comment, and the vast majority of public comments to the document were either against it and/or raised significant concerns about its methodology (with only one commenter supporting the analysis)[1]. One commenter stated, "I am an economist

[1] See https://forum.icann.org/lists/competition-pricing-prelim/

by training, and the report struck me as more argument than study, more an attempt to justify the new gTLD process than a serious evaluation of the facts of the matter."[2] Another comment included a longer report (with supporting data) that concluded, "Professor Carlton has made a number of assumptions about both the benefits and costs of new gTLDs that are simply not supported by market facts."[3] While it appears that ICANN disregarded the feedback and data provided disputing the findings in Prof. Carlton's analysis, Requestor attempted to review ICANN's Summary/analysis of comments[4] to confirm. However, that link redirected to Prof. Carlton's preliminary analysis and Requestor could not review ICANN's analysis or the reasons why it ignored facts and feedback contrary to its position. Furthermore, to date, ICANN has not conducted a data-based economic study regarding pricing and competition in the DNS (despite multiple requests over the past decade)[5]. One possible reason ICANN has not conducted such a study is because at least one assessment by ICANN based upon empirical data (rather than opinion) support's Prof. Carlton's position that price caps in legacy TLDs have maintained lower prices. As the assessment states on page 1: "The presence of price caps on legacy TLDs may help to explain the absence of changes in legacy TLD wholesale prices".[6]

Finally, ICANN's reliance on Prof. Carlton's Preliminary Analysis is nothing but a *post factum* construction in an attempt to justify ICANN's decision to remove the price cap. In 2013, Prof. Carlton's opinion was clearly not an impediment to maintain the price cap when renewing

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[2] See https://forum.icann.org/lists/competition-pricing-prelim/msg00019.html
[3] See https://forum.icann.org/lists/competition-pricing-prelim/pdf2m9kAd0xph.pdf
[4] Online at https://www.icann.org/resources/pages/compri-2009-03-04-en
[5] Two examples are https://forum.icann.org/lists/competition-pricing-prelim/pdf2m9kAd0xph.pdf and https://mm.icann.org/pipermail/comments-info-renewal-18mar19/attachments/20190430/11faa379/Responseto.Org.Info.BIZRenewalAgreementsv21.pdf
[6] See https://newgtlds.icann.org/en/reviews/cct/competitive-effects-phase-two-assessment-11oct16-en.pdf

the .org and .info RAs. So, why would this opinion suddenly become relevant now, where it was clearly not in 2013?

III. Reliance upon Base RA

Throughout the Determination, ICANN repeatedly states that the Base RA is the result of the ICANN policy development process (PDP), and provides links to various reports, documents, and letters to show that there was broad consensus to remove price caps from the Base RA. It is worth noting that the Base RA was developed for the *new gTLD registries*, and all of the evidence cited by ICANN confirms this. Requestor could not locate any confirmation in the references provided by ICANN that those participating in the development of the Base RA were aware that ICANN staff would subsequently apply the Base RA *to legacy TLDs* (e.g. they did not consider that price caps would be removed for legacy TLDs). As the public comments in 2006 and 2019 against removing price caps from the .org and .info registry agreements demonstrate, significant community opposition to removing the caps exists. Moreover, ICANN should have clarified to the participants in the development of the Base RA that it would later apply to legacy TLDs. Any statements by ICANN that the Base RA was intended to apply to legacy TLDs are disingenuous and revisionist by ICANN. The PDP on new gTLDs never aimed at changing the legal framework for legacy TLDs. The continued opposition, even with the advance notice of increases and the ability to renew for up to 10 years shows that the public still demands maintaining price caps to ensure predictable pricing for important TLDs.

ICANN also justifies adopting the Base RA for legacy TLDs because it includes protections for registrant pricing by requiring advance notice of price changes and allowing renewals of up to 10 years before the changes take effect. It is not clear why ICANN uses this

argument to justify its current decision, as those protections were present in the .org and .info registry agreements since 2006.[7]

The Base RA was adopted by ICANN on 2 July 2013,[8] and the registry agreements for .org and .info were last renewed on 22 August 2013[9]. As the Base RA was available to ICANN during the 2013 RA renewal process for these legacy TLDs, and if converting legacy TLDs to the Base RA was so important as to ignore massive public comment to the contrary, it is not clear why ICANN waited an additional six years to make the change.

IV. Public Comments

Although ICANN repeatedly states in its Determination that it considered the comments in detail, there are several factors which belie this position. A detailed review of the public comments submitted to ICANN regarding the changes to the .org and .info registry agreements reveals that ICANN ignored a number of glaring issues:

a. A number of commenters requested that ICANN keep their comment and/or their information private (yet it was published on icann.org);

b. A majority of comments published on icann.org included personally identifiable information (including full names, home addresses, telephone numbers, and email addresses) for individuals around the world (including the European Economic Area); and

c. One comment on icann.org reviewed by Namecheap was an ASCII representation of a hardcore pornographic image (which was removed in response to a Tweet by a

[7] See https://www.icann.org/resources/unthemed-pages/index-c1-2012-02-25-en and https://www.icann.org/resources/unthemed-pages/index-71-2012-02-25-en
[8] See https://www.icann.org/resources/pages/archive-54-2012-02-25-en
[9] See https://www.icann.org/resources/agreement/org-archive-1999-11-10-en and https://www.icann.org/resources/agreement/info-archive-2001-05-11-en

Namecheap staff member, just several weeks before ICANN published its staff report on the public comments).[10]

For obvious reasons, Requestor is not providing examples of the concerns above, however examples (including the ASCII art) can be provided upon request.

Additionally, it is still not clear why ICANN bothered to solicit public comment. Almost all of the comments were against removing price caps; yet ICANN decided to maintain its predetermined action. ICANN may state that it "considered" or "acknowledged" the public comment, but the fact that it maintained its prior position from before the public comment period shows otherwise. It is also absurd to state that the ICANN Board could read each comment had they so desired- the hundreds of hours required to review over 3,000 comments is a significant undertaking for Board members who have other responsibilities. It is a shame that ICANN staff chose not to share with the Board the multitude of personal stories from individuals and nonprofits as to how they will be adversely impacted by uncertain price increases. This effectively silenced the many voices that took the effort to provide feedback to ICANN.

V. Requestor Will Be Adversely Affected By Removal Of Price Caps

Although Requestor cannot now calculate future harm for price increases, its request detailed harms likely to occur in the future when prices rise for Namecheap, its customers, and various business sectors of the internet. The only time this harm can be measured is when prices do increase unreasonably, however at that point action through ICANN will not be possible. That is why ICANN must consider the substantial number of examples provided in Requestor's request and in the voluminous public comments with specific and real-world examples of harm by increased domain name registration prices. ICANN's Determination discounted all of these

[10] See https://twitter.com/lothar97/status/1128352716630085632

potential harms, allegedly by relying upon Prof. Carlton's opinion that price caps were unnecessary to protect against unreasonable price increases. As indicated above, reliance upon the opinion of a professor in 2009 unsupported by any real data or research is a significantly flawed position for ICANN to maintain when the lives of potentially tens of millions (or more) of people around the world may be impacted by its decision.

VI. Sale Of Public Interest Registry

On 13 November 2019, the Internet Society and Public Interest Registry (PIR) announced that PIR was sold to the investment firm Ethos Capital for an undisclosed sum of money[11] (however there is reasoned speculation the price was over $1 billion[12]). PIR is no longer a nonprofit company, will not pay upwards of $50 million annually to the Internet Society[13], and is now able to pay dividends to its shareholders. Additionally, it is not known how much of this acquisition was through debt (which will be required to be repaid with interest). Because this information was not available to Requestor (or ICANN) until last week, it is pertinent to be addressed in Requestor's rebuttal. The timing and the nature of this entire process is suspicious, and in a well-regulated industry, would draw significant scrutiny from regulators. For ICANN not to scrutinize this transaction closely in a completely transparent and accountable fashion (including public disclosure of pertinent information regarding the nature, cost, the terms of any debt associated with the acquisition, timeline of all parties involved, and the principals involved) would demonstrate that ICANN org and the ICANN Board do not function as a trusted or reliable internet steward.

[11] See https://thenew.org/the-internet-society-public-interest-registry-a-new-era-of-opportunity/
[12] See https://domainnamewire.com/2019/11/14/the-economics-of-org-domain-names/
[13] See http://domainincite.com/24976-selling-off-pir-did-isoc-just-throw-org-registrants-under-a-bus

The likely corporate entity for Ethos Capital was formed on 14 May 2019- the day after ICANN was due to publish its summary of public comments regarding the renewal of the .org registry agreement. The domain name ethoscapital.com was obtained by the investment firm sometime after July 2019 (as indicated by Exhibit B)- after ICANN removed the price cap requirement from the .org registry agreement. The domain name ethoscapital.org was registered on 7 May 2019 by the former CEO of ICANN Fadi Chehadé- who is a Senior Advisor for Abry Partners that led the acquisition of Donuts, Inc. (the entity that operates the most new gTLDs[14] and also the top 20 registrar Name.com[15]) (see attached registration data report from August 2018 to present as Exhibit C).

Mr. Chehadé is not the only former senior ICANN executive involved in these entities. Akram Atallah (former President of ICANN Global Domains Division (GDD)) is the CEO of Donuts (which was acquired by an affiliated private equity company). Nora Abusitta-Ouri (former Senior Vice President, Development and Public Responsibility Programs at ICANN, then employed by Mr. Chehadé's firm Chehadé & Company[16]) is the Chief Purpose Officer of Ethos Capital[17]. Ms. Abusitta-Ouri's LinkedIn profile indicates that she is also the Executive Director of the Digital Ethos Foundation. That Foundation uses the domain name digitalethos.foundation, which is registered to Binky Moon, LLC, the company operated by Donuts for contractual purposes with ICANN.[18] The word "ethos" has a connection for Mr. Chehadé, as he created the Multistakeholder Ethos Award while CEO of ICANN.[19] There are several other principals not previously employed by ICANN that make this transaction worthy of

[14] See https://www.prnewswire.com/news-releases/abry-partners-enters-into-agreement-to-invest-majority-stake-in-donuts-inc-300706706.html
[15] See https://www.domainstate.com/top-registrars.html
[16] See https://www.crunchbase.com/person/nora-abusitta#section-overview
[17] See https://www.linkedin.com/in/nora-abusitta/
[18] See http://domainincite.com/22675-donuts-scraps-200-companies-consolidates-under-binky-moon
[19] See https://www.icann.org/news/blog/multistakeholder-ethos-award-nomination-process

scrutiny. Jon Nevett is the current President and CEO of PIR.[20] He is a co-founder of Donuts, and left in October 2018[21]- and was replaced by Mr. Atallah.[22] The founder and CEO of Ethos Capital is Erik Brooks, who previously was at Abry Partners[23] and as recently as of October 2018, a board member of Donuts.[24]

When PIR adopted the new .org registry agreement, it stated it "is a mission driven non-profit registry and currently has no specific plans for any price changes for .ORG."[25] After the acquisition, PIR stated that it plans future takeovers and growth, however does not specify the resources to support these plans.[26] Considering that almost the entire source of revenue for PIR is from .org domain names, this strongly suggests the need to raise registration fees. The third largest gTLD registry, with an established and sterling reputation will be able to use its market power to raise prices as it sees fit. As PIR stated in August 2019 regarding price cap concerns, "We ourselves are a nonprofit, and we are driven by our mission of serving the public interest online. Public Interest Registry has served as the nonprofit registry operator for .ORG for more than 15 years and in that time, we have always strived to be thoughtful and responsible stewards of the Internet's most trusted and admired top-level domain. Our stewardship of .ORG will continue in the exact same manner for years to come."[27] This dynamic has been significantly altered, and ICANN must include the historical price caps in the .org registry agreement to ensure that future .org registrants are protected.

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[20] See https://thenew.org/org-people/about-pir/team/executive-team/
[21] See https://domainnamewire.com/2018/12/05/jon-nevett-named-new-ceo-of-pir-org/
[22] See https://www.prnewswire.com/news-releases/donuts-appoints-akram-j-atallah-as-ceo-300728610.html
[23] See https://ethoscapital.com/
[24] See https://donuts.news/donuts-appoints-akram-j-atallah-as-ceo
[25] See https://thenew.org/pir-welcomes-renewed-org-agreement/
[26] See http://www.domainpulse.com/2019/11/14/pir-eyeing-growth-ethos-capital-takeover/
[27] See https://mashable.com/article/dot-org-domain-private-equity-acquisition/

Another reason why this transaction and price caps needs to be reviewed is what happened when Donuts was acquired by Abry Partners. In 2017, Donuts was emphatic that it would not raise prices for existing registrants.[28] Within months of be acquired by Abry Partners, it raised prices in 2019 for 220 out of its 241 TLDs.[29] Any statements by PIR now to not raise prices unreasonably are just words,[30] and without price caps, there is no way that .org registrants are not used a source to generate revenue for acquisitions or to pay dividends to its shareholders.

While all of these connections and timing may be purely coincidental and above reproach, ICANN has a duty to review these concerns, and take steps to ensure that legacy TLD price caps maintained.

VII. Conclusion

Based on the foregoing and on the reasons expressed in RfR 19-2 and the letters exchanged in relation to this RfR, Requestor requests that the Board deny the Recommendation and grant RfR 19-2. This rebuttal is made reserving all rights, especially in view of the procedural imbalance, created *inter alia* by ICANN's requirement to respond to a 23-page Recommendation in a 10-page rebuttal, which was provided to Requestor 24 days after the expiration of the 90-day limit specified in the Standard Reconsideration Request Process[31] (and which also happened to be received on the first day of an ICANN meeting).

[28] See https://onlinedomain.com/2017/03/09/domain-name-news/donuts-no-plans-increase-prices-existing-registrants/
[29] See https://domainnamewire.com/2019/04/02/donuts-to-increase-domain-prices-in-october/
[30] See http://domainincite.com/24976-selling-off-pir-did-isoc-just-throw-org-registrants-under-a-bus
[31] See https://www.icann.org/en/system/files/files/reconsideration-request-timeline-24oct17-en.pdf

EXHIBIT A

	Q2 2008[1]	Q2 2019[2]
All TLDs	162 million	354 million
gTLDs	99 million	196 million
ccTLDs	63 million	159 million
Legacy TLDs	99 million	173 million
New gTLDs	NA	23 million
.com	77 million[3]	142 million
.net	12 million	13 million
.org	7 million	10 million
.info	5 million	4.5 million
.biz	2 million	1.5 million

[1] See https://www.verisign.com/assets/domain-name-report-june08.pdf
[2] See https://www.verisign.com/assets/domain-name-report-Q22019.pdf
[3] The data for .com, .net, .org, .info, and .biz are from Prof. Carlton's analysis rather than Verisign's Q2 2008 Domain Name Industry Brief

EXHIBIT B

Domain Report - EthosCapital.com

Domain Name	**EthosCapital.com**
Prepared On	**November 13, 2019**

Webs te Screenshot taken 04/09/2016

About This Report

This report documents a thorough analysis of the Internet domain name "**EthosCapital.com**". It draws on the extensive DomainTools dataset and aims to deliver a comprehensive view of the domain's ownership profile, key historical events and technically linked domain names.

All data in this Report is, or was, freely available through standard Internet DNS and query protocols. DomainTools has not altered the data in any way from its original form, except in certain instances to format it for readability in this Report.

Data from DomainTools is presented as-is, and as captured from the original source. We make no representations or warranties of fitness of any kind.

About DomainTools

DomainTools offers the most comprehensive searchable database of domain name registration and hosting data. Combined with our other data sites such as DailyChanges.com, Screenshots.com and ReverseMX.com, users of DomainTools.com can review millions of historical domain name records from basic Whois, and DNS information, to homepage images and email settings. The Company's comprehensive snapshots of past and present domain name registration, ownership and usage data, in addition to powerful research and monitoring resources, help customers by unlocking everything there is to know about a domain name. DomainTools is a Top 250 site in the Alexa rankings.

Reach us at memberservices@domaintools.com if you have any questions on this report.

Domain Profile

As of November 13, 2019

Ownership

Registered Owner	**Afternic DNescrow**
Owned Domains	**About 514 other domains**
Email Addresses	**abuse@godaddy.com**
Registrar	**godaddy.com, llc**

Registration

Created	**Oct 21, 2011**
Expires	**Aug 3, 2020**
Updated	**Aug 6, 2019**
Domain Status	**Parked**
Whois Server	**whois.godaddy.com**
Name Servers	**domaincontrol.com**

Network

Website IP Address	**198.49.23.144**
IP Location	**United States-New York-New York City Squarespace Inc.**
IP ASN	**AS53831**

Current Whois Record

Reported on Nov 13, 2019

```
Domain Name: ethoscapital.com
Registry Domain ID: 1683367694_DOMAIN_COM-VRSN
Registrar WHOIS Server: whois.godaddy.com
Registrar URL: http://www.godaddy.com
Updated Date: 2019-08-06T20:11:18Z
Creation Date: 2011-10-21T18:12:01Z
Registrar Registration Expiration Date: 2020-08-03T11:59:59Z
Registrar: GoDaddy.com, LLC
Registrar IANA ID: 146
Registrar Abuse Contact Email: abuse@godaddy.com
Registrar Abuse Contact Phone: +1.4806242505
Domain Status: clientTransferProhibited http://www.icann.org/epp#clientTransferProhibited
Domain Status: clientUpdateProhibited http://www.icann.org/epp#clientUpdateProhibited
Domain Status: clientRenewProhibited http://www.icann.org/epp#clientRenewProhibited
Domain Status: clientDeleteProhibited http://www.icann.org/epp#clientDeleteProhibited
Registrant Organization: Afternic DNescrow
Registrant State/Province: Massachusetts
Registrant Country: US
Registrant Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ethos
Admin Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ethoscapit
Tech Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ethoscapita
Name Server: PDNS03.DOMAINCONTROL.COM
Name Server: PDNS04.DOMAINCONTROL.COM
DNSSEC: unsigned
URL of the ICANN WHOIS Data Problem Reporting System: http://wdprs.internic.net/
```

Ownership History

Whois History for EthosCapital.com

DomainTools has 49 distinct historical ownership records for EthosCapital.com. The oldest record dates Jun 19, 2007. Each record is listed on its own page, starting with the most recent record. The date at the start of the section indicates the first time we captured the record. The website screenshot, when available, will be the image captured as close as possible to the record date.

About Whois History

DomainTools takes periodic snapshots of domain name Whois records and stores them for subsequent analysis. The database contains billions of Whois records across hundreds of millions of domains, dating back in some cases to 2001.

Whois Record on Oct 24, 2019

Screenshot taken Apr 9, 2016

```
Domain Name: ethoscapital.com
Registry Domain ID: 1683367694_DOMAIN_COM-VRSN
Registrar WHOIS Server: whois.godaddy.com
Registrar URL: http://www.godaddy.com
Updated Date: 2019-08-06T20:11:18Z
Creation Date: 2011-10-21T18:12:01Z
Registrar Registration Expiration Date: 2020-08-03T11:59:59Z
Registrar: GoDaddy.com, LLC
Registrar IANA ID: 146
Registrar Abuse Contact Email: abuse@godaddy.com
Registrar Abuse Contact Phone: +1.4806242505
Domain Status: clientTransferProhibited http://www.icann.org/epp#clientTransferProhibited
Domain Status: clientUpdateProhibited http://www.icann.org/epp#clientUpdateProhibited
Domain Status: clientRenewProhibited http://www.icann.org/epp#clientRenewProhibited
Domain Status: clientDeleteProhibited http://www.icann.org/epp#clientDeleteProhibited
Registrant Organization: Afternic DNescrow
Registrant State/Province: Massachusetts
Registrant Country: US
Registrant Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ethoscapital.c
Admin Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ethoscapital.com
Tech Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ethoscapital.com
Name Server: PDNS03.DOMAINCONTROL.COM
Name Server: PDNS04.DOMAINCONTROL.COM
DNSSEC: unsigned
URL of the ICANN WHOIS Data Problem Reporting System: http://wdprs.internic.net/
```

Whois Record on Oct 18, 2019

Screenshot taken Apr 9, 2016

```
Domain Name: ethoscapital.com
Registry Domain ID: 1683367694_DOMAIN_COM-VRSN
Registrar WHOIS Server: whois.godaddy.com
Registrar URL: http://www.godaddy.com
Updated Date: 2019-08-06T20:11:18Z
Creation Date: 2011-10-21T18:12:01Z
Registrar Registration Expiration Date: 2020-08-03T11:59:59Z
Registrar: GoDaddy.com, LLC
Registrar IANA ID: 146
Registrar Abuse Contact Email: abuse@godaddy.com
Registrar Abuse Contact Phone: +1.4806242505
Domain Status: clientTransferProhibited http://www.icann.org/epp#clientTransferProhibited
Domain Status: clientUpdateProhibited http://www.icann.org/epp#clientUpdateProhibited
Domain Status: clientRenewProhibited http://www.icann.org/epp#clientRenewProhibited
Domain Status: clientDeleteProhibited http://www.icann.org/epp#clientDeleteProhibited
Registrant Organization: Afternic DNescrow
Registrant State/Province: Massachusetts
Registrant Country: US
Registrant Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ethoscapital.c
Admin Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ethoscapital.com
Tech Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ethoscapital.com
Name Server: PDNS03.DOMAINCONTROL.COM
Name Server: PDNS04.DOMAINCONTROL.COM
DNSSEC: unsigned
URL of the ICANN WHOIS Data Problem Reporting System: http://wdprs.internic.net/
```

Whois Record on Oct 16, 2019

Screenshot taken Apr 9, 2016

```
Domain Name: ethoscapital.com
Registry Domain ID: 1683367694_DOMAIN_COM-VRSN
Registrar WHOIS Server: whois.godaddy.com
Registrar URL: http://www.godaddy.com
Updated Date: 2019-08-06T20:11:18Z
Creation Date: 2011-10-21T18:12:01Z
Registrar Registration Expiration Date: 2020-08-03T11:59:59Z
Registrar: GoDaddy.com, LLC
Registrar IANA ID: 146
Registrar Abuse Contact Email: abuse@godaddy.com
Registrar Abuse Contact Phone: +1.4806242505
Domain Status: clientTransferProhibited http://www.icann.org/epp#clientTransferProhibited
Domain Status: clientUpdateProhibited http://www.icann.org/epp#clientUpdateProhibited
Domain Status: clientRenewProhibited http://www.icann.org/epp#clientRenewProhibited
Domain Status: clientDeleteProhibited http://www.icann.org/epp#clientDeleteProhibited
Registrant Organization: Afternic DNescrow
Registrant State/Province: Massachusetts
Registrant Country: US
Registrant Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ethoscapital.c
Admin Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ethoscapital.com
Tech Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ethoscapital.com
Name Server: PDNS03.DOMAINCONTROL.COM
Name Server: PDNS04.DOMAINCONTROL.COM
DNSSEC: unsigned
URL of the ICANN WHOIS Data Problem Reporting System: http://wdprs.internic.net/
```

Whois Record on Aug 5, 2019

Screenshot taken Apr 9, 2016

Domain Name: ethoscapital.com
Registry Domain ID: 1683367694_DOMAIN_COM-VRSN
Registrar WHOIS Server: whois.godaddy.com
Registrar URL: http://www.godaddy.com
Updated Date: 2019-07-31T21:55:22Z
Creation Date: 2011-10-21T18:12:01Z
Registrar Registration Expiration Date: 2020-08-03T11:59:59Z
Registrar: GoDaddy.com, LLC
Registrar IANA ID: 146
Registrar Abuse Contact Email: abuse@godaddy.com
Registrar Abuse Contact Phone: +1.4806242505
Domain Status: clientTransferProhibited http://www.icann.org/epp#clientTransferProhibited
Domain Status: clientUpdateProhibited http://www.icann.org/epp#clientUpdateProhibited
Domain Status: clientRenewProhibited http://www.icann.org/epp#clientRenewProhibited
Domain Status: clientDeleteProhibited http://www.icann.org/epp#clientDeleteProhibited
Registrant Organization: Afternic DNescrow
Registrant State/Province: Massachusetts
Registrant Country: US
Registrant Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ethoscapital.c
Admin Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ethoscapital.com
Tech Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ethoscapital.com
Name Server: NS13.DOMAINCONTROL.COM
Name Server: NS14.DOMAINCONTROL.COM
DNSSEC: unsigned
URL of the ICANN WHOIS Data Problem Reporting System: http://wdprs.internic.net/

Whois Record on Jul 24, 2019

Screenshot taken Apr 9, 2016

```
Domain Name: ETHOSCAPITAL.COM
Registry Domain ID: 1683367694_DOMAIN_COM-VRSN
Registrar WHOIS Server: whois.godaddy.com
Registrar URL: http://www.godaddy.com
Updated Date: 2018-08-03T15:49:37Z
Creation Date: 2011-10-21T18:12:01Z
Registrar Registration Expiration Date: 2020-08-03T11:59:59Z
Registrar: GoDaddy.com, LLC
Registrar IANA ID: 146
Registrar Abuse Contact Email: abuse@godaddy.com
Registrar Abuse Contact Phone: +1.4806242505
Domain Status: clientTransferProhibited http://www.icann.org/epp#clientTransferProhibited
Domain Status: clientUpdateProhibited http://www.icann.org/epp#clientUpdateProhibited
Domain Status: clientRenewProhibited http://www.icann.org/epp#clientRenewProhibited
Domain Status: clientDeleteProhibited http://www.icann.org/epp#clientDeleteProhibited
Registrant Organization: Ethos Capital Group
Registrant State/Province: Texas
Registrant Country: US
Registrant Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ETHOSCAPITAL.C
Admin Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ETHOSCAPITAL.COM
Tech Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ETHOSCAPITAL.COM
Name Server: NS13.DOMAINCONTROL.COM
Name Server: NS14.DOMAINCONTROL.COM
DNSSEC: unsigned
URL of the ICANN WHOIS Data Problem Reporting System: http://wdprs.internic.net/
```

Whois Record on Apr 30, 2019

Screenshot taken Apr 9, 2016

```
Domain Name: ETHOSCAPITAL.COM
Registry Domain ID: 1683367694_DOMAIN_COM-VRSN
Registrar WHOIS Server: whois.godaddy.com
Registrar URL: http://www.godaddy.com
Updated Date: 2018-08-03T15:49:37Z
Creation Date: 2011-10-21T18:12:01Z
Registrar Registration Expiration Date: 2020-08-03T11:59:59Z
Registrar: GoDaddy.com, LLC
Registrar IANA ID: 146
Registrar Abuse Contact Email: abuse@godaddy.com
Registrar Abuse Contact Phone: +1.4806242505
Domain Status: clientTransferProhibited http://www.icann.org/epp#clientTransferProhibited
Domain Status: clientUpdateProhibited http://www.icann.org/epp#clientUpdateProhibited
Domain Status: clientRenewProhibited http://www.icann.org/epp#clientRenewProhibited
Domain Status: clientDeleteProhibited http://www.icann.org/epp#clientDeleteProhibited
Registrant Organization: Ethos Capital Group
Registrant State/Province: Texas
Registrant Country: US
Registrant Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ETHOSCAPITAL.C
Admin Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ETHOSCAPITAL.COM
Tech Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ETHOSCAPITAL.COM
Name Server: NS13.DOMAINCONTROL.COM
Name Server: NS14.DOMAINCONTROL.COM
DNSSEC: unsigned
URL of the ICANN WHOIS Data Problem Reporting System: http://wdprs.internic.net/
```

Whois Record on Feb 11, 2019

Screenshot taken Apr 9, 2016

Domain Name: ETHOSCAPITAL.COM
Registry Domain ID: 1683367694_DOMAIN_COM-VRSN
Registrar WHOIS Server: whois.godaddy.com
Registrar URL: http://www.godaddy.com
Updated Date: 2018-08-03T15:49:37Z
Creation Date: 2011-10-21T18:12:01Z
Registrar Registration Expiration Date: 2020-08-03T11:59:59Z
Registrar: GoDaddy.com, LLC
Registrar IANA ID: 146
Registrar Abuse Contact Email: abuse@godaddy.com
Registrar Abuse Contact Phone: +1.4806242505
Domain Status: clientTransferProhibited http://www.icann.org/epp#clientTransferProhibited
Domain Status: clientUpdateProhibited http://www.icann.org/epp#clientUpdateProhibited
Domain Status: clientRenewProhibited http://www.icann.org/epp#clientRenewProhibited
Domain Status: clientDeleteProhibited http://www.icann.org/epp#clientDeleteProhibited
Registrant Organization: Ethos Capital Group
Registrant State/Province: Texas
Registrant Country: US
Registrant Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ETHOSCAPITAL.C
Admin Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ETHOSCAPITAL.COM
Tech Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ETHOSCAPITAL.COM
Name Server: NS13.DOMAINCONTROL.COM
Name Server: NS14.DOMAINCONTROL.COM
DNSSEC: unsigned
URL of the ICANN WHOIS Data Problem Reporting System: http://wdprs.internic.net/

Whois Record on Nov 8, 2018

Screenshot taken Apr 9, 2016

```
Domain Name: ETHOSCAPITAL.COM
Registry Domain ID: 1683367694_DOMAIN_COM-VRSN
Registrar WHOIS Server: whois.godaddy.com
Registrar URL: http://www.godaddy.com
Updated Date: 2018-08-03T15:49:37Z
Creation Date: 2011-10-21T18:12:01Z
Registrar Registration Expiration Date: 2020-08-03T11:59:59Z
Registrar: GoDaddy.com, LLC
Registrar IANA ID: 146
Registrar Abuse Contact Email: abuse@godaddy.com
Registrar Abuse Contact Phone: +1.4806242505
Domain Status: clientTransferProhibited http://www.icann.org/epp#clientTransferProhibited
Domain Status: clientUpdateProhibited http://www.icann.org/epp#clientUpdateProhibited
Domain Status: clientRenewProhibited http://www.icann.org/epp#clientRenewProhibited
Domain Status: clientDeleteProhibited http://www.icann.org/epp#clientDeleteProhibited
Registrant Organization: Ethos Capital Group
Registrant State/Province: Texas
Registrant Country: US
Registrant Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ETHOSCAPITAL.C
Admin Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ETHOSCAPITAL.COM
Tech Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ETHOSCAPITAL.COM
Name Server: NS13.DOMAINCONTROL.COM
Name Server: NS14.DOMAINCONTROL.COM
DNSSEC: unsigned
URL of the ICANN WHOIS Data Problem Reporting System: http://wdprs.internic.net/
```

Whois Record on Aug 5, 2018

Screenshot taken Apr 9, 2016

```
Domain Name: ETHOSCAPITAL.COM
Registry Domain ID: 1683367694_DOMAIN_COM-VRSN
Registrar WHOIS Server: whois.godaddy.com
Registrar URL: http://www.godaddy.com
Updated Date: 2018-08-03T15:49:37Z
Creation Date: 2011-10-21T18:12:01Z
Registrar Registration Expiration Date: 2020-08-03T11:59:59Z
Registrar: GoDaddy.com, LLC
Registrar IANA ID: 146
Registrar Abuse Contact Email: abuse@godaddy.com
Registrar Abuse Contact Phone: +1.4806242505
Domain Status: clientTransferProhibited http://www.icann.org/epp#clientTransferProhibited
Domain Status: clientUpdateProhibited http://www.icann.org/epp#clientUpdateProhibited
Domain Status: clientRenewProhibited http://www.icann.org/epp#clientRenewProhibited
Domain Status: clientDeleteProhibited http://www.icann.org/epp#clientDeleteProhibited
Registrant Organization: Ethos Capital Group
Registrant State/Province: Texas
Registrant Country: US
Registrant Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ETHOSCAPITAL.C
Admin Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ETHOSCAPITAL.COM
Tech Email: Select Contact Domain Holder link at https://www.godaddy.com/whois/results.aspx?domain=ETHOSCAPITAL.COM
Name Server: NS13.DOMAINCONTROL.COM
Name Server: NS14.DOMAINCONTROL.COM
DNSSEC: unsigned
URL of the ICANN WHOIS Data Problem Reporting System: http://wdprs.internic.net/
```

EXHIBIT C

GoDaddy

Search the WHOIS Database

Enter a domain name to search

Search

Private Registration Local listings

WHOIS search results

Domain Name: ethoscapital.org
Registry Domain ID: D402200000010251407-LROR
Registrar WHOIS Server: whois.godaddy.com
Registrar URL: http://www.godaddy.com
Updated Date: 2019-05-07T14:42:39Z
Creation Date: 2019-05-07T14:42:38Z
Registrar Registration Expiration Date: 2020-05-07T14:42:38Z
Registrar: GoDaddy.com, LLC
Registrar IANA ID: 146
Registrar Abuse Contact Email: abuse@godaddy.com
Registrar Abuse Contact Phone: +1.4806242505
Domain Status: clientTransferProhibited http://www.icann.org/epp#clientTransferProhibited
Domain Status: clientUpdateProhibited http://www.icann.org/epp#clientUpdateProhibited
Domain Status: clientRenewProhibited http://www.icann.org/epp#clientRenewProhibited
Domain Status: clientDeleteProhibited http://www.icann.org/epp#clientDeleteProhibited
Registry Registrant ID: CR370633889
Registrant Name: Contact Information Redacted
Registrant Organization:
Registrant Street: Contact n ormation Redacted
Registrant City: Contact n ormation Redacted
Registrant State/Province: Contact nformation Redacted
Registrant Postal Code: Contact nformation Redacted
Registrant Country: Contact Information Redacted
Registrant Phone: Contact Information Redacted
Registrant Phone Ext:
Registrant Fax:
Registrant Fax Ext:
Registrant Email: Contact nformation Redacted
Registry Admin ID: CR370633894
Admin Name: Contact Information Redacted
Admin Organization:
Admin Street: Contact n ormation Redacted
Admin City: Contact n ormation Redacted
Admin State/Province: Con ac nforma ion Redac ed
Admin Postal Code: Con ac nforma ion Redac ed
Admin Country: Contact Information Redacted

Admin Phone: Contact Information Redacted
Admin Phone Ext:
Admin Fax:
Admin Fax Ext:
Admin Email: Contact nformation Redacted
Registry Tech ID: CR370633891
Tech Name: Contact Information Redacted
Tech Organization:
Tech Street: Contact n ormation Redacted
Tech City: Contact n ormation Redacted
Tech State/Province: Contact nformation Redacted
Tech Postal Code: Contact Informat on Redacted
Tech Country: Contact Information Redacted
Tech Phone: Contact Information Redacted
Tech Phone Ext:
Tech Fax:
Tech Fax Ext:
Tech Email: Contact nformation Redacted
Name Server: PDNS09.DOMAINCONTROL.COM
Name Server: PDNS10.DOMAINCONTROL.COM
DNSSEC: unsigned
URL of the ICANN WHOIS Data Problem Reporting System: http://wdprs.internic.net/
>>> Last update of WHOIS database: 2019-11-13T20:00:00Z <<<

For more information on Whois status codes, please visit https://www.icann.org/resources/pages/epp-status-codes-2014-06-16-en

Notes:

IMPORTANT: Port43 will provide the ICANN-required minimum data set per
ICANN Temporary Specification, adopted 17 May 2018.
Visit https://whois.godaddy.com to look up contact data for domains
not covered by GDPR policy.

The data contained in GoDaddy.com, LLC's Whols database,
while believed by the company to be reliable, is provided "as is"
with no guarantee or warranties regarding its accuracy. This
information is provided for the sole purpose of assisting you
in obtaining information about domain name registration records.
Any use of this data for any other purpose is expressly forbidden without the prior written
permission of GoDaddy.com, LLC. By submitting an inquiry,
you agree to these terms of usage and limitations of warranty. In particular,
you agree not to use this data to allow, enable, or otherwise make possible,
dissemination or collection of this data, in part or in its entirety, for any
purpose, such as the transmission of unsolicited advertising and
and solicitations of any kind, including spam. You further agree
not to use this data to enable high volume, automated or robotic electronic
processes designed to collect or compile this data for any purpose,
including mining this data for your own personal or commercial purposes.

Please note: the registrant of the domain name is specified

in the "registrant" section. In most cases, GoDaddy.com, LLC is not the registrant of domain names listed in this database.

See Underlying Registry Data | Contact Domain Holder | Report Invalid Whois

Want to buy this domain?

Get it with our Domain Broker Service.

Go

Is this your domain?

Add hosting, email and more.

Go

Get our newsletter, join the community:

Email Address

SIGN UP

We love taking your call.

guides

About GoDaddy

About Us

Newsroom

Investor Relations

Careers

Corporate Responsibility

GoDaddy Store

Trust Center

Legal

Help Center

Help Center

Community

GoDaddy Blog

Contact Us

Report Abuse

Resources

Webmail

WHOIS

GoDaddy Mobile App

ICANN Confirmation

Tools for Pros

Redeem Code

Product Catalog

Site Map

Videos

Partner Programs

Affiliates

Reseller Programs

GoDaddy Pro

Account

My Account

My Renewals

Create Account

Shopping

Domains

Websites

WordPress

Hosting

Web Security

Email & Office

Phone Numbers

Promos

United States - English ^ USD ^

Contact Us

Petillion

Annex 11

FINAL DETERMINATION
OF THE ICANN BOARD OF DIRECTORS
RECONSIDERATION REQUEST 19-2
21 November 2019

The Requestor, Namecheap Inc., seeks reconsideration of ICANN organization's 2019 renewal of the Registry Agreements (RAs) with Public Interest Registry (PIR) and Afilias Limited (Afilias) for the .ORG and .INFO generic top-level domains (gTLDs), respectively (individually .ORG Renewed RA and .INFO Renewed RA; collectively, the .ORG/.INFO Renewed RAs), insofar as the renewals eliminated "the historic price caps" on domain name registration fees for .ORG and .INFO.[1] The Requestor claims that ICANN org's "decision to ignore public comments to keep price caps in legacy gTLDs is contrary to ICANN's Commitments and Core Values, and ICANN should reverse this decision for the public good."[2]

Specifically, the Requestor claims that the .ORG/.INFO Renewed RAs are contrary to:

(i) ICANN org's commitment to "seek input from the public, for whose benefit ICANN in all events shall act."[3]

(ii) ICANN org's Core Value of "[s]eeking 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."[4]

(iii) ICANN org's Public Comment Opportunities page, which states that "Public Comment is a key part of the policy development process (PDP), allowing for refinement of recommendations before further consideration and potential adoption," and is "used to guide implementation work, reviews, and operational activities of the ICANN organization."[5]

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[1] Request 19-2, § 3, at Pg. 2.
[2] *Id.* § 8, at Pg. 3.
[3] *Id.* § 8, at Pg. 4.
[4] *Id.* § 8, at Pg. 4.
[5] *Id.* § 8, at Pg. 4.

(iv) ICANN org's statements concerning its call for Public Comment that the "purpose of this public comment proceeding is to obtain community input on the proposed .ORG renewal agreement."[6]

The Requestor also asserts that ICANN Staff failed to consider material information concerning the nature of the .ORG TLD and security issues with new gTLDs when it executed the .ORG/.INFO Renewed RAs.[7]

The Requestor "requests that ICANN org and the ICANN Board reverse its decision and include (or maintain) price caps in all legacy gTLDs."[8]

I. Brief Summary.

PIR is the registry operator for the .ORG TLD.[9] ICANN org and PIR entered into an RA on 2 December 2002 for the continued operation of the .ORG gTLD, which was renewed in 2006 and 2013.[10] ICANN org and Afilias first entered into an RA on 11 May 2001 for the operation of the .INFO gTLD, which was renewed in 2006 and 2013.[11] Before the recent renewals, the RAs for .ORG and .INFO included price caps, which limited the initial prices and allowable price increases for registrations.[12] Both RAs were scheduled to expire on 30 June 2019.

In anticipation of the 30 June 2019 expiration, ICANN org bilaterally negotiated renewals to the agreements with each registry operator. The proposed renewals were based on ICANN org's base generic TLD Registry Agreement updated on 31 July 2017 (Base RA),

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[6] *Id.*, § 8, at Pg. 4.
[7] *Id.*, § 8, at Pg. 10.
[8] *Id.*, § 9, at Pg. 12.
[9] Public Comment Proceeding, Proposed Renewal of .ORG RA, 18 March 2019 (2019 .ORG RA Public Comment Proceeding), https://www.icann.org/public-comments/org-renewal-2019-03-18-en.
[10] *Id.*
[11] Public Comment Proceeding, Proposed Renewal of .INFO RA, 18 March 2019 (2019 .INFO RA Public Comment Proceeding), https://www.icann.org/public-comments/info-renewal-2019-03-18-en.
[12] 2002 .ORG RA, https://www.icann.org/resources/unthemed-pages/index-2002-12-02-en; 2001 .INFO RA, https://www.icann.org/resources/unthemed-pages/registry-agmt-2001-05-11-en.

modified to account for the specific nature of the .ORG and .INFO gTLDs.[13] As a result, the proposed Renewed RAs' terms were substantially similar to the terms of the Base RA.

From January 2019 to June 2019, ICANN Staff briefed and met with the Board several times regarding the proposed .ORG/.INFO Renewed RAs.[14] On 18 March 2019, ICANN Staff published the proposed .ORG/.INFO Renewed RAs for public comment to obtain community input on the proposed renewals. ICANN Staff described the material differences between proposed renewals and the current .ORG and .INFO RAs. These differences included removal of limits on domain name registration fee increases that had been in prior .ORG and .INFO RAs. ICANN Staff explained that the change would "allow the .ORG [and .INFO] renewal agreement[s] to better conform with the [Base RA]," while "tak[ing] into consideration the maturation of the domain name market and the goal of treating the Registry Operator[s] equitably with registry operators of new gTLDs and other legacy gTLDs utilizing the [Base RA]."[15]

ICANN org received over 3,700 submissions in response to its call for public comments on the proposed .ORG and .INFO agreements.[16] The comments predominantly related to three themes: (1) the proposed removal of price cap provisions; (2) inclusion of certain rights

[13] *See* 2019 .ORG RA Public Comment Proceeding; 2019 .INFO RA Public Comment Proceeding. The RA for the operation of .BIZ was also set to expire on 30 June 2019; as a result of bilateral negotiations with the registry operator for .BIZ and after considering public comments, ICANN org and the registry operator for .BIZ entered into a Renewed RA for .BIZ that was based on (and therefore substantially similar to) the Base RA. *See* https://www.icann.org/resources/agreement/biz-2019-06-30-en.

[14] Letter from Namazi to Muscovitch, 26 July 2019, at Pg. 2, https://www.icann.org/en/system/files/correspondence/namazi-to-muscovitch-26jul19-en.pdf.

[15] 2019 .ORG RA Public Comment Proceeding. New gTLDs are TLDs released as part of ICANN org's New gTLD Program. *See* https://newgtlds.icann.org/en/about/program. Legacy gTLDs are gTLDs that existed before ICANN org's New gTLD Program. .ORG and .INFO are legacy TLDs.

[16] Report of Public Comments, .ORG, at Pg. 3, https://www.icann.org/en/system/files/files/report-comments-org-renewal-03jun19-en.pdf; Report of Public Comments, .INFO, at Pg. 3, https://www.icann.org/en/system/files/files/report-comments-info-renewal-03jun19-en.pdf.

protection mechanisms (RPMs), including the Uniform Rapid Suspension (URS) rules; and (3) the RA renewal process.[17]

ICANN Staff analyzed the public comments, including those addressing the proposed removal of price cap provisions, in its Report of Public Comments.[18] It concluded that removing the price cap provisions was "consistent with the Core Values of ICANN org as enumerated in the Bylaws," insofar as removing the price cap provisions would "promote competition in the registration of domain names," and enabled ICANN org to "depend upon market mechanisms to promote and sustain a competitive environment in the [Domain Name System (DNS)] market."[19] ICANN org also noted that the Base RA protected existing registrants' pricing by requiring the registry operator to: (1) give registrars six months' advance notice of price changes; and (2) allow registrants to renew their domain name registrations for up to 10 years *before* those price changes take effect.[20] ICANN Staff then noted that it would "consider the feedback from the community on this issue,"[21] "and, in consultation with the ICANN Board of Directors, make a decision regarding the proposed registry agreement."[22]

Following consultation with the ICANN Board of Directors and with the Board's support, on 30 June 2019, ICANN Staff announced that it had executed the .ORG/.INFO Renewed RAs. The .ORG/.INFO Renewed RAs did not include price caps.[23]

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[17] Report of Public Comments, .INFO, at Pg. 3; Report of Public Comments, .ORG, at Pg. 3.
[18] ICANN org received some comments supporting removal of the price cap provision because "ICANN org is not and should not be a price regulator," and because the Base RA would provide certain protections to current registrants. Report of Public Comments, .ORG, at Pg. 6.
[19] *Id.*, at Pg. 8.
[20] *Id.*
[21] *Id.*
[22] *Id.*, at Pg. 1.
[23] *See* ICANN org announcements: .ORG Renewed RA, https://www.icann.org/resources/agreement/org-2019-06-30-en; .INFO Renewed RA, https://www.icann.org/resources/agreement/info-2019-06-30-en.

On 12 July 2019, the Requestor filed Request 19-2, seeking reconsideration of the .ORG/.INFO Renewed RAs.

The Ombudsman accepted Request 19-2 for consideration, and, after investigating, concluded that "the CEO and Staff acted within the scope of the powers given them by the Board,"[24] and that "no rules or duties of corporate governance were violated (including the ICANN Bylaws)."[25]

The Board adopted a Proposed Determination denying Request 19-2 on 3 November 2019.[26] On 18 November 2019, the Requestor submitted a rebuttal to the Board's Proposed Determination. The Requestor challenged the Board's reliance on evidence concerning and mechanisms designed for new gTLDs as compared to legacy TLDs, reiterated its argument that ICANN Staff should have acted in accordance with "essentially unanimous public comments in support of price caps," and asserted that the recent acquisition of .ORG by a for-profit entity merits additional scrutiny of the .ORG Renewed RA.[27]

The Board has considered Request 19-2 and all relevant materials. Based on its extensive review of all relevant materials, the Board finds that reconsideration is not warranted because ICANN org's execution of the .ORG/.INFO Renewed RAs was consistent with ICANN's

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[24] Evaluation by the ICANN Ombudsman of Request for Reconsideration 19-2, at Pg. 5, 7 September 2019, https://www.icann.org/resources/pages/reconsideration-19-2-namecheap-request-2019-07-22-en.

[25] *Id*.

[26] Board action on Proposed Determination on Request 19-2, https://www.icann.org/resources/board-material/resolutions-2019-11-03-en#1.a; Proposed Determination on Request 19-2, https://www.icann.org/en/system/files/files/reconsideration-19-2-namecheap-board-proposed-determination-03nov19-en.pdf. The Board designated the Board Accountability Mechanisms Committee (BAMC) to review and consider Reconsideration Requests before making recommendations to the Board on the merits of those Requests. Bylaws, Art. 4, § 4.2(e). However, the BAMC is empowered to act only upon consideration by a quorum of the Committee. *See* BAMC Charter https://www.icann.org/resources/pages/charter-bamc-2017-11-02-en. Here, the majority of the BAMC members recused themselves from voting on this matter due to potential or perceived conflicts, or out an abundance of caution. Accordingly, the BAMC did not have a quorum to consider Request 19-2 so the Board itself issued the Proposed Determination in lieu of a Recommendation from the BAMC.

[27] Rebuttal in Support of Request 19-2, https://www.icann.org/en/system/files/files/reconsideration-19-2-namecheap-requestor-rebuttal-board-proposed-determination-18nov19-en.pdf.

Bylaws, policies, and procedures, and ICANN Staff considered all material information prior to executing the .ORG/.INFO Renewed RAs.

II. Facts.

A. Historic .ORG and .INFO RAs.

On 2 December 2002, ICANN org and PIR entered into a RA for the continued operation of .ORG, which became effective in 2003.[28] ICANN org and Afilias first entered into a RA on 11 May 2001 for the operation of .INFO.[29] Both RAs included price caps.[30]

In 2006, ICANN org considered removing price caps from several legacy gTLDs, including .INFO and .ORG.[31] However, after reviewing over 2,000 comments from over 1,000 commenters, many opposing removal of the price caps, and at the Board's direction, ICANN org renegotiated the .ORG and .INFO RAs to include price caps.[32] Following a public comment period for the revised RAs (which included price caps), on 8 December 2006, the Board approved .ORG and .INFO RAs with price caps (as proposed and posted during the public comment period for the revised RAs).[33]

B. The New gTLD Program and the Base RA.

In 2005, ICANN's Generic Names Supporting Organization (GNSO) undertook a policy development process to consider expanding the DNS by introducing new gTLDs.[34] In 2007, the GNSO concluded that "ICANN must implement a process that allows the introduction of new

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[28] 2019 .ORG RA Public Comment Proceeding; *see also* https://www.icann.org/resources/unthemed-pages/index-2002-12-02-en; https://www.icann.org/resources/unthemed-pages/registry-agmt-4e-2003-08-19-en.
[29] 2019 .INFO RA Public Comment Proceeding.
[30] 2002 .ORG RA, https://www.icann.org/resources/unthemed-pages/registry-agmt-4e-2003-08-19-en; 2001 .INFO RA, https://www.icann.org/resources/unthemed-pages/registry-agmt-2001-05-11-en.
[31] 2006 Public Comment of .BIZ, .INFO, .ORG, https://www.icann.org/news/announcement-3-2006-07-28-en.
[32] *See* Revised .BIZ, .INFO and .ORG Registry Agreements Posted for Public Comment, https://www.icann.org/news/announcement-2006-10-24-en.
[33] .ORG RA, 8 December 2006, https://www.icann.org/resources/unthemed-pages/index-c1-2012-02-25-en; .INFO RA, 8 December 2006, https://www.icann.org/resources/unthemed-pages/index-71-2012-02-25-en.
[34] https://newgtlds.icann.org/en/about/program.

[gTLDs]."[35] Accordingly, ICANN org established and implemented the New gTLD Program, "enabling the largest expansion of the [DNS]."[36]

In 2009, ICANN org commissioned Professor Dennis W. Carlton to analyze "whether price caps... would be necessary to insure the potential competitive benefits" of new gTLDs.[37] Carlton concluded that price caps were "unnecessary to insure competitive benefits of the proposed process for introducing new [gTLDs]," and also noted that "competition among suppliers to attract new customers in markets characterized by switching costs [such as the market for gTLDs] limits or eliminates the suppliers' [*i.e.*, the registry operators'] incentive and ability to act opportunistically."[38] He explained that "a supplier that imposes unexpected or unreasonable price increases will quickly harm its reputation[,] making it more difficult for it to continue to attract new customers. Therefore, even in the absence of price caps, competition can reduce or eliminate the incentives for suppliers to act opportunistically."[39]

Carlton performed his analysis during the Base RA development process.[40] That process included multiple rounds of public comment on the proposed Base RA, several months of negotiations, meetings with stakeholders and communities, and formal community feedback via

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[35] GNSO Final Report: Introduction of New Generic Top-Level Domains, 8 Aug. 2007, https://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07 htm#_Toc43798015.
[36] https://newgtlds.icann.org/en/about/program.
[37] Preliminary Analysis of Dennis Carlton Regarding Price Caps for New gTLD Internet Registries, at ¶ 4, March 2009 https://archive.icann.org/en/topics/new-gtlds/prelim-report-registry-price-caps-04mar09-en.pdf. Professor Carlton has been a Professor of Economics at the Booth School of Business of The University of Chicago, and Co-Editor of the Journal of Law and Economics, Competition Policy International since 1984. *Id.*, at ¶¶ 1-2. He also served as Deputy Assistant Attorney General for Economic Analysis, Antitrust Division, United States Department of Justice from October 2006 through January 2008. *Id.*, at ¶ 3. In 2014, Professor Carlton was designated Economist of the Year by Global Competition Review. https://www.chicagobooth.edu/faculty/directory/c/dennis-w-carlton. Professor Carlton previously served as Professor of Economics at the Massachusetts Institute of Technology. Preliminary Analysis of Dennis Carlton Regarding Price Caps for New gTLD Internet Registries, at ¶ 1.
[38] *Id.*, at ¶ 12.
[39] *Id.*
[40] *See* New gTLD Program gTLD Applicant Guidebook, Version 2012-06-04, Preamble, *available for download at* https://newgtlds.icann.org/en/applicants/agb.

a public comment forum.[41] The Base RA was established in 2013 and aligns with the GNSO's policy recommendations for new gTLDs.[42] Since 2014, ICANN org has worked with legacy gTLD registry operators to transition the agreements for legacy gTLDs to the Base RA as well, and several legacy gTLDs, including .CAT, .JOBS, .MOBI, .PRO, .TEL, .TRAVEL, and .ASIA have adopted the Base RA in renewal agreements.[43] The Base RA does not contain price caps, but it "does contain requirements designed to protect registrants from a price perspective," including requirements that registry operators "provide registrars at least 30 days advance written notice of any price increase for initial registrations, and to provide a minimum 6-month notice for any price increases of renewals."[44] In addition, the registry operators must allow registrants to renew for up to 10 years before implementing a price change, and subject to restrictions on discriminatory pricing.[45]

Using the Base RA for renewed legacy gTLDs without price cap provisions "is consistent with the gTLDs launched via the new gTLD program and will reduce ICANN org's role in domain pricing."[46] This promotes ICANN's Core Values of "introduc[ing] and promot[ing] competition in the registration of domain names and, where feasible and appropriate, depend[ing] upon market mechanisms to promote and sustain a competitive environment in the DNS market."[47]

The Base RA provides additional protections for the public benefit. For example, in 2015 the Board noted that the Base RA allows ICANN org to "designate an emergency interim

[41] https://www.icann.org/public-comments/base-agreement-2013-04-29-en; *see also* 26 July 2019 Letter, at Pg. 1.
[42] 26 July 2019 Letter, at Pg. 1; *see also* GNSO Final Report: Introduction of New Generic Top-Level Domains, 8 Aug. 2007, https://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm#_Toc43798015.
[43] 26 July 2019 Letter, at Pg. 1.
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Id.*, at Pg. 2.

registry operator of the registry for the TLD, which would mitigate the risks to the stability and security of the [DNS]."[48] Additionally, using the Base RA ensures that the Registry will use "uniform and automated processes, which will facilitate operation of the TLD," and "includes safeguards in the form of public interest commitments in Specification 11."[49]

The Board has also explained that transitioning legacy gTLDs to the Base RA "will provide consistency across all registries leading to a more predictable environment for end-users."[50] The Base RA's requirement that the registry operator only use ICANN accredited registrars that are party to the 2013 Registrar Accreditation Agreement "will provide more benefits to registrars and registrants."[51] Finally, the Board has noted that the Base RA "includes terms intended to allow for swifter action in the event of certain threats to the security or stability of the DNS,"[52] another public benefit.

C. The 2019 .ORG and .INFO RA Renewals.

The .ORG RA with PIR was renewed several times, including on 22 August 2013.[53] Likewise, the .INFO RA with Afilias was renewed on 22 August 2013.[54]

In anticipation of the 30 June 2019 expiration of the 2013 .ORG and .INFO RAs, ICANN org bilaterally negotiated renewals with each registry operator. The proposed renewals were based on ICANN org's Base RA, modified "to account for the specific nature[s]" of each TLD

[48] Rationale for Board Resolution 2015.09.28.06 (renewal of .PRO RA), https://www.icann.org/resources/board-material/resolutions-2015-09-28-en#1.e.rationale; *see also* Rationale for Board Resolution 2015.09.28.04 (renewal of .CAT RA), https://www.icann.org/resources/board-material/resolutions-2015-09-28-en#1.c.rationale; Rationale for Board Resolution 2015.09.28.05 (renewal of .TRAVEL RA), https://www.icann.org/resources/board-material/resolutions-2015-09-28-en#1.d rationale; 2019 .ORG RA, Art. 2, § 2.13, at Pg. 7, https://www.icann.org/sites/default/files/tlds/org/org-agmt-pdf-30jun19-en.pdf.
[49] Rationale for Board Resolution 2015.09.28.06; *see also* 2019 .ORG RA, Specification 11, at Pgs. 95-96, https://www.icann.org/sites/default/files/tlds/org/org-agmt-pdf-30jun19-en.pdf.
[50] Rationale for Board Resolution 2015.09.28.06.
[51] *Id.*
[52] *Id.*
[53] 2019 .ORG RA Public Comment Proceeding.
[54] 2019 .INFO RA Public Comment Proceeding.

and as a result of negotiations between ICANN and the registry operators.[55] On 18 March 2019, ICANN org published the proposed .ORG/.INFO RAs for public comment to obtain community input on the proposed renewals. ICANN org published redline versions of the proposed renewal agreements against the Base RA, and identified the material differences between proposed renewals and the Base RA. ICANN org explained that

> [i]n alignment with the [Base RA], the price cap provisions in the current .ORG [and .INFO] agreement[s], which limited the price of registrations and allowable price increases for registrations, are removed from the .ORG [and .INFO] renewal agreement[s]. Protections for existing registrants will remain in place, in line with the [Base RA]. This change will not only allow the .ORG [and .INFO] renewal agreement[s] to better conform with the [Base RA], but also takes into consideration the maturation of the domain name market and the goal of treating the Registry Operator equitably with registry operators of new gTLDs and other legacy gTLDs utilizing the [Base RA].[56]

The public comment period for the .ORG/.INFO Renewed RAs opened on 18 March 2019 and closed on 29 April 2019.[57] During that time, ICANN org received over 3,200 submissions in response to its call for public comments on the proposed .ORG agreement,[58] and over 500 submissions in response to its call for comments on the proposed .INFO agreement.[59] The comments predominantly related to three themes: (1) the proposed removal of the price cap provisions; (2) inclusion of the RPMs; and (3) the RA renewal process.[60]

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[55] *See* 2019 .ORG RA Public Comment Proceeding ; 2019 .INFO RA Public Comment Proceeding.
[56] 2019 .ORG RA Public Comment Proceeding; 2019 .INFO RA Public Comment Proceeding.
[57] 2019 .ORG RA Public Comment Proceeding; 2019 .INFO RA Public Comment Proceeding.
[58] Report of Public Comments, .ORG, at Pg. 3, https://www.icann.org/en/system/files/files/report-comments-org-renewal-03jun19-en.pdf.
[59] Report of Public Comments, .INFO, at Pg. 3, https://www.icann.org/en/system/files/files/report-comments-info-renewal-03jun19-en.pdf.
[60] *Id.*, at Pg. 3; Report of Public Comments, .ORG, at Pg. 3.

ICANN org detailed its analysis of the public comments concerning the .ORG/.INFO Renewed RAs—including those addressing the proposed removal of price cap provisions—in its Report of Public Comments.[61] ICANN org concluded that

> [r]emoving the price cap provisions in the .ORG [and .INFO RAs] is consistent with the Core Values of ICANN org as enumerated in the Bylaws approved by the ICANN community. These values guide ICANN org to introduce and promote competition in the registration of domain names and, where feasible and appropriate, depend upon market mechanisms to promote and sustain a competitive environment in the DNS market.[62]

ICANN org also noted that

> the Base [RA] would also afford protections to existing registrants . . . [e]nacting this change will not only allow the .ORG renewal agreement to conform to the Base [RA], but also takes into consideration the maturation of the domain name market and the goal of treating the Registry Operator equitably with registry operators of new gTLDs and other legacy gTLDs utilizing the Base [RA].[63]

ICANN org explained that it would "consider the feedback from the community on this issue,"[64] and then ICANN org would "consider the public comments received and, in consultation with the ICANN Board of Directors, make a decision regarding the proposed registry agreement."[65]

ICANN org reviewed and considered all of the comments submitted concerning the proposed .ORG/.INFO Renewed RAs,[66] then ICANN Staff briefed the ICANN Board on its analysis of the public comments during the Board workshop on 21-23 June 2019.[67] With support from the Board to proceed with execution of the proposed renewals and pursuant to the ICANN

[61] Report of Public Comments, .ORG, at Pg. 8; Report of Public Comments, .INFO, at Pg. 7.
[62] Report of Public Comments, .ORG, at Pg. 8; Report of Public Comments, .INFO, at Pg. 7.
[63] Report of Public Comments, .ORG, at Pg. 8; Report of Public Comments, .INFO, at Pg. 7.
[64] Report of Public Comments, .ORG, at Pg. 8; Report of Public Comments, .INFO, at Pg. 7.
[65] Report of Public Comments, .ORG, at Pg. 1; Report of Public Comments, .INFO, at Pg. 1.
[66] 26 July 2019 Letter, at Pg. 2.
[67] 26 July 2019 Letter at Pg. 2.

Delegation of Authority Guidelines, on 30 June 2019, ICANN org executed the .ORG/.INFO Renewed RAs.[68]

D. The Request for Reconsideration.

The Requestor submitted Request 19-2 on 12 July 2019.

Pursuant to Article 4, Section 4.2(l) of the Bylaws, ICANN org transmitted Request 19-2 to the Ombudsman for consideration, and the Ombudsman accepted consideration of the reconsideration request.[69]

After investigating, the Ombudsman concluded that "the CEO and Staff acted within the scope of the powers given them by the Board,"[70] and that "no rules or duties of corporate governance were violated (including the ICANN Bylaws)."[71] He determined that the "Board were well aware of the public comments" because ICANN Staff briefed the Board on the comments, and because the comments were publicly available, so Board members could have read each comment had they so desired.[72] Additionally, the Ombudsman concluded that "the whole renewal process and the terms themselves may be described as a corporate governance matter, and no rules or duties of corporate governance were violated (including the ICANN Bylaws)."[73]

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[68] *See* ICANN org announcements: .ORG RA, https://www.icann.org/resources/agreement/org-2019-06-30-en; .INFO RA, https://www.icann.org/resources/agreement/info-2019-06-30-en.

[69] https://www.icann.org/en/system/files/files/reconsideration-19-2-namecheap-ombudsman-action-redacted-27aug19-en.pdf.

[70] Evaluation by the ICANN Ombudsman of Request for Reconsideration 19-2, at Pg. 5, 7 September 2019.

[71] *Id.*

[72] *Id.*

[73] *Id.*, at Pg. 5. On 12 September 2019, the Internet Commerce Association (ICA) wrote to the Ombudsman, asserting that the Ombudsman "made ill-informed and disparaging comments about members of the ICANN community" in the Ombudsman's evaluation. 12 September 2019 letter from Z. Muskovitch to H. Waye, https://www.icann.org/en/system/files/files/reconsideration-19-2-namecheap-letter-ica-to-icann-ombudsman-12sep19-en.pdf. The ICA asked the Ombudsman to "apologize to the numerous people who submitted these Comments and to retract [his] ill-advised statements." *Id.*, at Pg. 3.

The Board adopted a Proposed Determination denying Request 19-2 on 3 November 2019.[74] On 18 November 2019, the Requestor submitted a rebuttal to the Board's Proposed Determination. The Requestor argued that: (1) the Board should not have relied on an expert economist's 2009 assessment of the propriety of price caps in new gTLD Registry Agreements; (2) the Base RA's development process does not support migration of .ORG and .INFO to the Base RA; (3) ICANN Staff disregarded "essentially unanimous public comments in support of price caps"; and (4) that a for-profit entity purchased .ORG after the .ORG Renewed RA was executed "requires that ICANN [org] review this purchase in detail and take the necessary steps to ensure that .org domains are not used [as] a source of revenue" for certain purposes.[75]

E. Relief Requested.

The Requestor "requests that ICANN org and the ICANN Board reverse its decision and include (or maintain) price caps in all legacy TLDs."[76]

III. Issues Presented.

The issues are as follows:

1. Whether ICANN Staff's decision not to include price caps in the .ORG/.INFO Renewed RA contradicts ICANN's Mission, Commitments, Core Values, or established ICANN policies; and

2. Whether ICANN Staff failed to consider material information when it executed the .ORG/.INFO Renewed RAs.

[74] Board action on Proposed Determination on Request 19-2, https://www.icann.org/resources/board-material/resolutions-2019-11-03-en#1.a; Proposed Determination on Request 19-2, https://www.icann.org/en/system/files/files/reconsideration-19-2-namecheap-board-proposed-determination-03nov19-en.pdf.
[75] Rebuttal in Support of Request 19-2, https://www.icann.org/en/system/files/files/reconsideration-19-2-namecheap-requestor-rebuttal-board-proposed-determination-18nov19-en.pdf.
[76] Request 19-2, § 9, at Pg. 12.

IV. The Relevant Standards for Reconsideration Requests.

Articles 4.2(a) and (c) of ICANN's Bylaws provide in relevant part that any entity "may submit a request for reconsideration or review of an ICANN action or inaction . . . to the extent 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."[77]

The Board now considers Request 19-2's request for reconsideration of Staff action[78] on the grounds that the action was taken in contradiction of ICANN's Bylaws and without consideration of material information. The Board has reviewed the Request and all relevant materials and now makes this final determination. Denial of a Request for Reconsideration of ICANN Staff action is appropriate if the Board determines that the requesting party has not satisfied the reconsideration criteria set forth in the Bylaws.[79]

V. Analysis and Rationale.

A. The .ORG/.INFO Renewed RAs Are Consistent With ICANN Org's Commitments.

[77] Bylaws, Art. 4 §§ 4.2(a) and (c).
[78] The Requestor sought reconsideration of Board and Staff Action, and brought the Request on behalf of itself and "725 Namecheap customers and internet users." *See* Request 19-2, § 2, at Pg. 2; *id.* § 10, at Pg. 12. Request 19-2 does not identify an action or inaction of the Board. Further, the Requestor's claim on behalf of its customers is not sufficiently stated because it does not satisfy the requirement that the Requestor, not a third party, must have been adversely affected by the challenged action. Accordingly, the Board's consideration is with respect to the Requestor's challenge to Staff action.
[79] Bylaws, Art. 4 § 4.2(e).

The Requestor claims that omitting the price caps from the .ORG/.INFO Renewed RAs contradicts ICANN org's Commitment to "seek input from the public, for whose benefit ICANN in all events shall act."[80]

The Requestor acknowledges that "ICANN [org] requested public comment regarding the changes to the .ORG registry agreement."[81] It asserts, however, that ICANN org "reject[ed] all of the comments against removing the price cap with a conclusory statement that is devoid of any supporting evidence," and as a result, "the public comment process is basically a sham."[82] In sum, the Requestor claims that including price caps in the .ORG/.INFO Renewed RAs "ignore[d] the public benefit or almost unanimous feedback to the contrary."[83]

The Requestor does not dispute that ICANN org "review[ed] and consider[ed] all 3,200+ comments received,"[84] and acknowledged that the removal of the price caps was "[a] primary concern voiced in the comments."[85] ICANN Staff presented and discussed the "key issues raised in the public comment process and correspondence," including removal of price caps, with the Board before executing the .ORG/.INFO Renewed RAs.[86] Further, as the Ombudsman noted, the Board was "well aware of the public comments."[87]

The Reports of Public Comment were the result of ICANN Staff's extensive analysis of the comments;[88] consistent with ICANN Staff's ordinary process for preparing the Report of

[80] Request 19-2, § 8, at Pg. 4.
[81] *Id.* § 8, at Pg. 3.
[82] *Id.* § 8, at Pgs. 10, 12; *see also* Rebuttal, at Pg. 5 ("it is still not clear why ICANN [org] bothered to solicit public comment"; omitting price caps from the .ORG/.INFO Renewed RAs "effectively silenced" those who submitted public comments opposing removal of price caps).
[83] Request 19-2,§ 8, at Pg. 12.
[84] 26 July 2019 Letter at Pg. 2.
[85] Report of Public Comments, .ORG, at Pg. 3; Report of Public Comments, .INFO, at Pg. 3.
[86] 26 July 2019 Letter, at Pg. 2.
[87] Ombudsman Evaluation of Request 19-2, at Pg. 5.
[88] The Requestor argues that ICANN Staff did not conduct an extensive analysis of the public comments because of "glaring issues" with the manner in which certain comments were posted to ICANN org's website. Rebuttal, at Pg. 5. Those issues do not concern the substance of public comments concerning the proposed price caps. They are not relevant to Request 19-2.

Public Comment, ICANN Staff identified the main themes in the comments and summarized them, providing exemplary excerpts for each of those themes.[89] Neither the Bylaws, nor any ICANN policy or procedure, requires ICANN Staff to discuss each position stated in each comment. By the same token, there is no threshold number of comments about a topic that, if reached, requires ICANN Staff to address that topic in the Report of Public Comments. Even a single comment on a theme may merit inclusion in the report, under certain circumstances; likewise, a multitude of comments on a theme may merit little or no consideration in the report, under other circumstances.[90]

That ICANN org ultimately decided to proceed without price caps despite public comments opposing this approach does not render the public comment process a "sham," "silence[]" public comments, or otherwise demonstrate that ICANN org failed to act for the public benefit. ICANN Staff's careful consideration of the public comments—as reflected in its Report of Public Comments and discussion with the Board,[91] demonstrate the exact opposite, namely that the inclusion of price caps was carefully considered.

Further, the Report of Public Comments demonstrates ICANN Staff's belief that it was acting for the public benefit by "promot[ing] competition in the registration of domain names," providing the same "protections to existing registrants" afforded to registrants of other TLDs, and treating "the Registry Operator equitably with registry operators of new gTLDs and other

[89] *See* Report of Public Comments, .ORG, at Pg. 3 ("This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor."); Report of Public Comments, .INFO, at Pg. 3 (same).
[90] The Board acknowledges the ICA's disagreement with the Ombudsman's characterization of certain comments as "spam" and "computer generated." 12 September 2019 Letter, at Pgs. 1-2. ICANN Staff acknowledged both the volume of comments submitted concerning the proposed .ORG/.INFO Renewed RAs and the issues they raised—including the removal of price cap provisions—without discounting the comments based on their apparent source. *See* Report of Public Comments, .ORG; Report of Public Comments, .INFO. Accordingly, the ICA's arguments do not change the Board's determination that reconsideration is not warranted here.
[91] 26 July 2019 Letter, at Pg. 2.

legacy gTLDs utilizing the Base [RA]."[92] There is no support for the Requestor's assertion that ICANN Staff's belief in this regard was based upon "conclusory statements not supported by evidence."[93] Among other things, ICANN org considered Professor Carlton's 2009 expert analysis of the Base RA, including his conclusion that limiting price increases was not necessary, and that the increasingly competitive field of registry operators in itself would serve as a safeguard against anticompetitive increases in domain name registration fees.[94] Finally, ICANN Staff was aware of the Board's 2015 statements (made in the course of approving the migration of another legacy gTLD, .PRO, to the Base RA) that the Base RA as a whole benefits the public by offering important safeguards that ensure the stability and security of the DNS and a more predictable environment for end-users.[95]

In sum, the Requestor's conclusory assertion that ICANN org did not act for the public benefit is unsupported and does not support reconsideration.

B. The .ORG/.INFO Renewed RAs Are Consistent With ICANN Org's Core Values.

The Requestor asserts that omitting the price caps from the .ORG/.INFO Renewed RAs contradicts ICANN org's Core Value of

> [s]eeking 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.[96]

Contrary to the Requestor's argument, ICANN org *did* seek broad, informed participation through the public comment process for the .ORG/.INFO Renewed RAs. As noted above,

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[92] Report of Public Comments, .ORG, at Pg. 8.
[93] Request 19-2, § 8, at Pg. 12.
[94] Preliminary Analysis of Dennis Carlton Regarding Price Caps for New gTLD Internet Registries, March 2009, at ¶ 12, https://archive.icann.org/en/topics/new-gtlds/prelim-report-registry-price-caps-04mar09-en.pdf.
[95] *See* Rationale for Board Resolution 2015.09.28.06.
[96] Request 19-2, § 8, at Pg. 4.

ICANN org considered the responses and other factors, including its commitment to "[m]ake decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment,"[97] and its Core Values of "depending on market mechanisms to promote and sustain a competitive environment in the DNS market" where "feasible and appropriate," and "[i]ntroducing and promoting competition in the registration of domain names where practicable and beneficial to the public interest as identified through the bottom-up, multistakeholder policy development process."[98]

Moreover, the public comment process is but one of several channels for ICANN's multistakeholder community to voice opinions. Members of the community may also voice their opinions in public meetings and through the final recommendations of supporting organizations, advice from advisory committees, and direct correspondence with ICANN org. Accordingly, the multistakeholder community provides input to ICANN org in many ways, and ICANN org considers this input to ensure that all views have been taken into account during a decision-making process.

However, ICANN org's Core Values do not require it to accede to each request or demand made in public comments or otherwise asserted through ICANN's various communication channels. Here, ICANN org ultimately determined that ICANN's Mission was best served by replacing price caps in the .ORG/.INFO Renewed RAs with other pricing protections to promote competition in the registration of domain names, afford the same "protections to existing registrants" that are afforded to registrants of other TLDs, and treat registry operators equitably.[99] Further, the Base RA, which is incorporated in the .ORG/.INFO

[97] Bylaws, Art. 1, § 1.2(a)(v); *see also* 26 July 2019 Letter, at Pg. 1.
[98] Bylaws, Art. 1, § 1.2(b)(iii), (iv); *see also* 26 July 2019 Letter, at Pg. 2.
[99] Report of Public Comments, .ORG, at Pg. 8; Report of Public Comments, .INFO, at Pg. 7.

Renewed RA, "was developed through the bottom-up multi-stakeholder process including multiple rounds of public comment."[100] In sum, "[r]emoving the price cap provisions in the .org Registry Agreement is consistent with the Core Values of ICANN org as enumerated in the Bylaws approved by the ICANN community. These values guide ICANN org to introduce and promote competition in the registration of domain names and, where feasible and appropriate, depend upon market mechanisms to promote and sustain a competitive environment in the DNS market."[101]

On rebuttal, the Requestor asserts that the Base RA "was developed for the new gTLD registries" and there is no evidence that participants in the Base RA development understood that ICANN org might use the Base RA for legacy gTLDs.[102] But ICANN org "has consistently used the Base RA as the starting point for discussions with legacy gTLD operators about renewing their Registry Agreements" since no later than 2014.[103] Since then, the following other legacy gTLDs have adopted the Base RA in renewed agreements: .CAT, .JOBS, .MOBI, .PRO, .TEL, .TRAVEL, .ASIA, and .BIZ.[104]

Moreover, all registry agreements include a presumptive right of renewal clause. This clause provides a registry operator the right to renew the agreement at its expiration provided the registry operator is in good standing (e.g., the registry operator does not have any uncured breaches), and subject to the terms of their presumptive renewal clauses.

In the course of engaging with a legacy registry operator on renewing its agreement, ICANN org prefers to and proposes that the registry operator adopts the new form of registry

[100] 26 July 2019 Letter, at Pg. 1.
[101] Report of Public Comments, .ORG, at Pg. 8.
[102] Rebuttal, at Pg. 4.
[103] 26 July 2019 Letter, at Pg. 1.
[104] *Id.*

agreement that is used by new gTLDs as the starting point for the renewal negotiations. The new form includes several enhancements that benefit the domain name ecosystem such as better safeguards in dealing with domain name infrastructure abuse, emergency backend support, as well as adoption of new bilaterally negotiated provisions that ICANN org and the gTLD Registries Stakeholder Group conduct from time to time for updates to the form agreement and adoption of new services (e.g., RDAP) and procedures.

Although ICANN org proposes the new form of registry agreement as a starting place for the renewal, because of the registry operator's presumptive right of renewal ICANN org is not in a position to mandate the new form as a *condition* of renewal. If a registry operator states a strong preference for maintaining its existing legacy agreement form, ICANN org would accommodate such a position, and has done so in at least one such instance.

While the prevailing policy is that all new gTLD registries must adopt the new form of registry agreement, there is no consensus policy that prohibits a legacy registry operator from adopting the new form of the agreement. Accordingly, ICANN org adhered to its commitment to treat the .ORG and .INFO registry operators consistently with other legacy gTLD registry operators (rather than single them out for discriminatory treatment) when it used the Base RA as the starting point for its renewal discussions in 2019.[105]

The Requestor has not demonstrated that ICANN org failed to seek or support broad participation or ascertain the global public interest. To the contrary, ICANN org's transparent processes reflect its continuous efforts to ascertain and pursue the global public interest by

[105] *See* ICANN Bylaws, Art. 1, § 1.2(a)(v). That the .ORG and .INFO RAs that were renewed in August 2013 did not adopt the Base RA, which had been adopted just one month earlier, is not relevant. As noted above, ICANN org's consistent practice of using the Base RA for discussions with legacy gTLDs began in 2014. 26 July 2019 Letter, at Pg. 1.

migrating the legacy gTLDs to the Base RA. Accordingly, this argument does not support reconsideration.

C. ICANN Org's Statements Concerning The Purpose Of Public Comments Do Not Support Reconsideration.

The Requestor asserts that reconsideration is warranted because omitting the price caps from the .ORG/.INFO Renewed RAs is contrary to ICANN org's statement on its Public Comment Opportunities page that "Public Comment is a key part of the policy development process (PDP), allowing for refinement of recommendations before further consideration and potential adoption," and is "used to guide implementation work, reviews, and operational activities of the ICANN organization."[106] The Requestor asserts that omitting the price caps is inconsistent with ICANN org's statement that the "purpose of this public comment proceeding is to obtain community input on the proposed .ORG renewal agreement."[107]

Ultimately, ICANN org's decision not to include price caps in the .ORG/.INFO Renewed RAs does not mean that ICANN org failed to "obtain community input" or "use[]" the public comment "to guide implementation work" of ICANN org.[108] To the contrary, it is clear that ICANN org actively solicited community input, and carefully analyzed it as part of its efforts—in consultation with the Board—to ascertain, and then with the Board's support, to pursue, the global public interest.

Additionally, the Board notes that reconsideration is available for ICANN Staff actions that contradict ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies).[109] ICANN org's general description of the purpose of the public comment process is

[106] Request 19-2, § 8, at Pg. 4.
[107] *Id.*
[108] *See id.*
[109] Bylaws, Art. 4 § 4.2(c). The challenged action must adversely affect the Requestor as well. *Id.*

not a Commitment, Core Value, established policy, nor part of ICANN org's Mission. Accordingly, even if ICANN org's decision to execute the .ORG/.INFO Renewed RAs without price caps contradicted these statements—and it did not, as explained in Section V.A above — this inconsistency could not form the basis of a Reconsideration Request.

D. The Requestor Has Not Demonstrated That ICANN Org Acted Without Consideration Of Material Information.

The Requestor asserts that ICANN org's analysis of the proposed removal of price caps "ignores significant information that is contrary to its sweeping conclusions."[110] Specifically, the Requestor asserts that ICANN org's analysis ignores that:

1. .ORG "is the 3rd largest" TLD, and "additional analysis is needed to determine whether this market share can result in uncompetitive practices,"[111]

2. .ORG "was established in 1985," "is universally known, associated with nonprofit use, and has an excellent reputation,"[112]

3. It can be "a cumbersome and costly process" for an established entity to change domain name, and "often" leads to "negative results (inability to connect with users, loss of search engine positions, confusion over validity of new domain, etc). Many would rather stay with an established domain (and the associated goodwill)."[113]

4. "TLDs are not interchangeable, as ICANN states. While there may be 1,200 other gTLDs to choose from, many of the new gTLDs are closed and not useable by nonprofits . . . or targeted to certain uses . . .and cannot be used by nonprofits or businesses. It would be desirable for ICANN to identify which new gTLDs might be acceptable replacements to .ORG."[114]

5. Although some new gTLDs are targeted to nonprofits, "there are few registrations in those TLDs (perhaps demonstrating that nonprofits do not want an alternative to .ORG)."[115]

[110] Request 19-2, § 8, at Pg. 10.
[111] *Id.*
[112] *Id.*
[113] *Id.*, at Pg. 10-11.
[114] *Id.*, at Pg. 11.
[115] *Id.*

6. "There are some concerns [that] higher levels of abuse exists in new gTLD domains . . . . ICANN's own analysis shows greater levels of abuse in new gTLDs compared to legacy TLDs."[116]

7. "[I]t is possible that new gTLDs will not be usable in internet browsers, mobile devices, or email systems- all which greatly diminish the ability for nonprofits to switch to a new gTLD for their main domain name."[117]

The Report of Public Comments for the .ORG Renewed RA makes clear that ICANN org *did* consider some of these concerns. Specifically, with respect to Item 1, ICANN Staff noted that commenters "questioned whether ICANN org conducted an economic study or research on the potential market implications of removing the existing pricing protections."[118] With respect to Item 2, ICANN Staff acknowledged that commentators noted that ".ORG was developed, cultivated and established over decades as catering to non-profit and similar charitable organizations."[119] With respect to Items 3, 4, 5, and 7, ICANN Staff acknowledged "concerns about the burden and costs associated with moving [a] web presence to another TLD," along with comments characterizing .ORG as "the most appropriate registry for a charity or non-profit."[120] Accordingly, the Requestor's argument that the information about these six "concerns" was not considered or was ignored is incorrect and therefore does not support reconsideration.

With respect the Requestor's assertion that "ICANN's own analysis shows greater levels of abuse in new gTLDs compared to legacy TLDs,"[121] the Requestor mischaracterizes the cited ICANN report. As the Requestor notes, the 2019 Domain Abuse Activity Reporting (DAAR) report concluded that 48.11% of the "domains identified as security threats . . . were in legacy

[116] *Id.* citing https://www.icann.org/en/system/files/files/daar-monthly-report-31jan19-en.pdf.
[117] *Id.*, at Pg. 11-12.
[118] Report of Public Comments, .ORG, at Pg. 5.
[119] *Id.*, at Pgs. 3-4.
[120] *Id.*, at Pgs. 4-5.
[121] *Id.*, citing 31 January 2019 DAAR Report, https://www.icann.org/en/system/files/files/daar-monthly-report-31jan19-en.pdf.

[TLDs]," and the remaining 51.89% of the domains identified as threats were in new gTLDs.[122] Further, the Report indicates that about 12% of TLD domain names are hosted on new gTLDs.[123] However, the Report also notes that 88% of the new gTLD domains identified as security threats were concentrated in only 25 new gTLDs, out of over 340 new gTLDs.[124] The Report further noted that 98% of the domains identified as security threats were hosted by "the 50 most-exploited new [TLDs]."[125] Accordingly, even if ICANN Staff did not consider the 2019 DAAR Report, the Requestor has not shown that the information contained in it was material to the inclusion of price caps in the .ORG/.INFO Renewed RAs. Moreover, the cited portions of the DAAR Report relate to security threats, not domain name registration fees. This argument does not support reconsideration.

E. The Requestor Has Not Demonstrated That It Has Been Adversely Affected By The .ORG/.INFO Renewed RAs.

The Requestor asserts that it has been adversely affected by the challenged conduct because, "[a]s a domain name registrar, removal of prices caps for legacy TLDs will negatively impact [the Requestor's] domain name registration business," insofar as the .ORG/.INFO Renewed RAs create an "uncertainty of price increases."[126] That the Requestor could not quantify the actual financial impact on the Requestor of removing the price caps at the time it submitted Request 19-2 was not material to our preliminary procedural evaluation, because the Requestor asserted that the financial uncertainty *itself* is the harm. Accordingly, the Board Accountability Mechanisms Committee (BAMC) concluded that Request 19-2 was sufficiently

[122] 31 January 2019 DAAR Report, Executive Summary.
[123] *Id.*, at Pg. 5.
[124] *Id.*, at Pg. 6. Similarly, four legacy TLDs hosted more than 94% of the legacy TLD domains identified as security threats. *Id.*
[125] *Id.*, at Pg. 6.
[126] Request 19-2, § 6, at Pg. 2; *see also id.* § 10, at Pg. 13.

stated.[127] However, the BAMC's conclusion that the Requestor sufficiently asserted that it was materially harmed was not a determination that the Requestor was in fact materially harmed or, if so, that removing the .ORG/.INFO Renewed RAs caused that harm.

The Board now concludes that the Requestor has not shown that it has been harmed by the .ORG/.INFO Renewed RAs. As noted above, in 2009, Professor Carlton concluded that price caps were unnecessary to protect against unreasonable increases in domain name registration fees.[128] Professor Carlton explained that "a supplier that imposes unexpected or unreasonable price increases will quickly harm its reputation[,] making it more difficult for it to continue to attract new customers. Therefore, even in the absence of price caps, competition can reduce or eliminate the incentives for suppliers to act opportunistically."[129] The Requestor disagrees with the Board's conclusion, but raises no new arguments or evidence supporting its disagreement.[130] Instead, in its Rebuttal, the Requestor merely repeats the argument from its original Request, namely that the claimed harm is "likely to occur," rather than presently existing.[131]

Regardless of whether the speculative harm on which Requestor bases Request 19-2 could be sufficient to support a Reconsideration Request, it is not sufficient here because (1) ICANN Staff acted consistent with ICANN Bylaws, policies, and procedures when it renewed the .ORG/.INFO RAs,[132] and (2) the additional safeguards discussed above demonstrate that, at this time, Requestor's concerns are not well founded.

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[127] *See* Ombudsman Action on Request 19-2, at Pg. 2.
[128] Preliminary Analysis of Dennis Carlton Regarding Price Caps for New gTLD Internet Registries, March 2009, at ¶ 12, https://archive.icann.org/en/topics/new-gtlds/prelim-report-registry-price-caps-04mar09-en.pdf.
[129] *Id.*
[130] Rebuttal, at Pgs. 6-7.
[131] *Id.* at Pg. 6.
[132] *See supra* § V.B.

In its Rebuttal the Requestor also challenges the Board's reliance on Professor Carlton's 2009 Preliminary Analysis Regarding Price Caps.[133] The Requestor asserts that the Board should disregard Professor Carlton's analysis because: (1) it is an opinion and does not cite "any data sources or references," (2) certain public commenters disagreed with Professor Carlton, (3) it focused on the propriety of removing price caps for new gTLDs and not legacy gTLDs, and (4) the Board did not reference Professor Carlton's analysis when the .ORG/.INFO RAs were renewed in 2013.[134]

The Requestor's first and second arguments amount to a disagreement with Professor Carlton's conclusions. They do not support reconsideration. Professor Carlton is a leader in economic analysis, particularly concerning antitrust issues.[135] His 2009 Preliminary Analysis is based on his extensive experience with and expertise in market forces. It is not—and does not claim to be—a data-driven study or survey.[136] The Requestor's disagreement with Professor Carlton's conclusions does not necessarily render them incorrect.

The Requestor's third argument does not support reconsideration because, although Professor Carlton did note that price caps in some legacy gTLDs had the effect of limiting prices that new gTLDs could charge, as noted above Professor Carlton identified other controls that also have the effect of limiting price increases.[137] The Requestor's fourth argument likewise does not support reconsideration. The Requestor has identified no established policy or procedure (because there is none) requiring the Board to consider the exact same information and

[133] Rebuttal, at Pg. 2.
[134] *Id.* at Pg. 2-3.
[135] *See supra* § II.B.
[136] *See* Preliminary Analysis of Dennis Carlton Regarding Price Caps for New gTLD Internet Registries, March 2009, https://archive.icann.org/en/topics/new-gtlds/prelim-report-registry-price-caps-04mar09-en.pdf.
[137] *See supra* § II.B.

materials for every RA renewal. The Requestor has not demonstrated that consideration of Professor Carlton's analysis violates ICANN Bylaws or established policies or procedures.

The Requestor has not shown that it has, in fact, been harmed by the financial uncertainty it identified in Request 19-2, nor that it has been harmed by any price increases under the .ORG/.INFO Renewed RAs. Instead, the Requestor asserts that "additional analysis is needed to determine whether" the removal of price caps in the .ORG RA "can result in uncompetitive practices."[138] This suggestion of further study is insufficient, at this stage, to warrant Reconsideration. The Requestor has not identified any *evidence* that it has been harmed or will be harmed by removal of the price caps, and the evidence that is available—Professor Carlton's expert report—indicates that such harm is not expected. Accordingly, reconsideration is not warranted.

F. The Parent Company of the .ORG Registry Operator Is Not Relevant to the Reconsideration Request and Does Not Support Reconsideration.

The Requestor argues that the "timing and nature" of the 13 November 2019 acquisition of the .ORG Registry Operator PIR by an investment firm "is suspicious" because the Requestor believes that negotiations for the acquisition began before the .ORG RA was renewed.[139] Accordingly, the Requestor asserts, ICANN should "scrutinize this transaction closely."[140] However, PIR's corporate structure is not relevant to Request 19-2, which concerns the 30 June 2019 renewal of the .ORG RA and must be evaluated in accordance with the grounds for reconsideration as set forth in ICANN's Bylaws. The Ethos Capital acquisition of PIR, which was announced more than four months after the execution of the .ORG Renewed RA, did not

[138] Request 19-2, § 8, at Pg. 10.
[139] Rebuttal, at Pg. 7.
[140] *Id.*

impact ICANN Staff's determination that ICANN's Mission and Core Values were best served by migrating the .ORG/.INFO RAs to the Base RA.[141]

In sum, Request 19-2 is not the appropriate vehicle for challenging Ethos Capital's acquisition of PIR.

VI. Determination.

The Board has considered the merits of Request 19-2 and, based on the foregoing, concludes that ICANN org's execution of the .ORG/.INFO Renewed RAs did not contradict ICANN's Bylaws, policies, or procedures, and that ICANN Staff did not fail to consider material information in executing the Agreements. Accordingly, the Board denies Request 19-2.

[141] *See supra* § II.C. Neither ICANN Staff nor PIR were aware that Ethos Capital would acquire PIR when the parties finalized the .ORG Renewed RA. *See* http://domainincite.com/24988-i-attempt-to-answer-icas-questions-about-the-terrible-blunder-org-acquisition.

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Annex 12

Approved Board Resolutions | Special Meeting of the ICANN (Internet Corporation for Assigned Names and Numbers) Board

21 Nov 2019

1. **Main Agenda:**
    a. **Consideration of Reconsideration Request 19-2: .ORG and .INFO renewal**

    Rationale for Resolution 2019.11.21.01

1. Main Agenda:

a. Consideration of Reconsideration Request 19-2: .ORG and .INFO renewal

Whereas, Namecheap Inc. (Requestor) filed a reconsideration request (Request 19-2) challenging ICANN (Internet Corporation for Assigned Names and Numbers) organization's 2019 renewal of the Registry Agreements (RAs) with Public Interest Registry (PIR) and Afilias Limited (Afilias) for the .ORG and .INFO generic top-level domains (gTLDs), respectively (collectively, .ORG/.INFO Renewed RAs), insofar as the renewals eliminated "the historic price caps" on domain name registration fees for .ORG and .INFO.[1]

Whereas, the Requestor claims that ICANN (Internet Corporation for Assigned Names and Numbers) org's "decision to ignore public comments to keep price caps in legacy gTLDs is contrary to ICANN (Internet Corporation for Assigned Names and Numbers)'s Commitments and Core Values, and ICANN (Internet Corporation for Assigned Names and Numbers)

should reverse this decision for the public good."[2] The Requestor also asserts that ICANN (Internet Corporation for Assigned Names and Numbers) Staff failed to consider material information concerning the nature of .ORG and security issues with new gTLDs when it executed the .ORG/.INFO Renewed RAs.[3]

Whereas, the Board Accountability Mechanisms Committee (BAMC) previously determined that Request 19-2 is sufficiently stated and sent Request 19-2 to the Ombudsman for consideration in accordance with Article 4, Section 4.2(j) and (k) of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws.

Whereas, pursuant to Article 4, Section 4.2(l), the Ombudsman accepted Request 19-2 for consideration, and, after investigating, concluded that "the CEO and Staff acted within the scope of the powers given them by the Board," and that "no rules or duties of corporate governance were violated (including the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws)."[4]

Whereas, the Board previously issued a Proposed Determination (/en/system/files/files/reconsideration-19-2-namecheap-board-proposed-determination-03nov19-en.pdf) denying reconsideration because ICANN (Internet Corporation for Assigned Names and Numbers) org's execution of the .ORG/.INFO Renewed RAs did not contradict ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws, policies, or procedures, and ICANN (Internet Corporation for Assigned Names and Numbers) Staff did not fail to consider material information in executing the Agreements. (*See* https://www.icann.org/resources/board-material/resolutions-2019-11-03-en#1.a (/resources/board-material/resolutions-2019-11-03-en#1.a).) The Board's action was taken in lieu of the BAMC's substantive evaluation on Request 19-2

pursuant to Article 4, Section 4.2(e) of the Bylaws because the BAMC did not have a quorum to consider Request 19-2.

Whereas, the Board has carefully considered the merits of Request 19-2 and all relevant materials, including the Requestor's rebuttal, and the Board reaffirms its conclusions in the Proposed Determination (/en/system/files/files/reconsideration-19-2-namecheap-board-proposed-determination-03nov19-en.pdf) that ICANN (Internet Corporation for Assigned Names and Numbers) org's execution of the .ORG/.INFO Renewed RAs did not contradict ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws, policies, or procedures, and that ICANN (Internet Corporation for Assigned Names and Numbers) Staff did not fail to consider material information in executing the Agreements. The Board further concludes that the rebuttal provides no additional argument or evidence to support reconsideration.

Resolved (2019.11.21.01), the Board adopts the Final Determination on Reconsideration Request 19-2 (/en/system/files/files/reconsideration-19-2-namecheap-final-determination-21nov19-en.pdf).

Rationale for Resolution 2019.11.21.01

1. **Brief Summary and Recommendation**

   The full factual background is set forth in the Proposed Determination on Request 19-2 (/en/system/files/files/reconsideration-19-2-namecheap-board-proposed-determination-03nov19-en.pdf) (Proposed Determination), which is incorporated here.

   On 3 November 2019, the Board evaluated Request 19-2 and all relevant materials, and issued a Proposed Determination (/en/system/files/files/reconsideration-19-2-

namecheap-board-proposed-determination-03nov19-en.pdf) denying reconsideration because ICANN (Internet Corporation for Assigned Names and Numbers) org's execution of the .ORG/.INFO Renewed RAs did not contradict ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws, policies, or procedures, and ICANN (Internet Corporation for Assigned Names and Numbers) Staff did not fail to consider material information in executing the Agreements. (*See* https://www.icann.org/resources/board-material/resolutions-2019-11-03-en#1.a (/resources/board-material/resolutions-2019-11-03-en#1.a).) The Board's action was taken in lieu of the BAMC's substantive evaluation on Request 19-2 pursuant to Article 4, Section 4.2(e) of the Bylaws because the BAMC did not have a quorum to consider Request 19-2.

On 18 November 2019, the Requestor submitted a rebuttal to the Proposed Determination (Rebuttal), pursuant to Article 4, Section 4.2(q) of ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws. The Requestor claims that (1) the Board should not have relied on an expert economist's prior assessment of the need for price caps in new gTLD (generic Top Level Domain) Registry Agreements; (2) the Base RA (Registrar)'s development process does not support migration of .ORG and .INFO to the Base RA (Registrar); (3) ICANN (Internet Corporation for Assigned Names and Numbers) Staff disregarded "essentially unanimous public comments in support of price caps"; (4) that it has sufficiently alleged harm, and (5) that a for-profit entity purchased .ORG after the .ORG Renewed RA (Registrar) was executed "requires that ICANN (Internet Corporation for Assigned Names and Numbers) [org] review

this purchase in detail and take the necessary steps to ensure that .org domains are not used [as] a source of revenue" for certain purposes.[5]

The Board has carefully considered Request 19-2 and all relevant materials, including the Requestor's rebuttal, and, for the reasons set forth in detail in the Final Determination (/en/system/files/files/reconsideration-19-2-namecheap-final-determination-21nov19-en.pdf), the Board reaffirms its conclusions in the Proposed Determination (/en/system/files/files/reconsideration-19-2-namecheap-board-proposed-determination-03nov19-en.pdf) and concludes that the Rebuttal provides no additional argument or evidence to support reconsideration.

2. **Analysis and Rationale**

   A. The .ORG/.INFO Renewed RAs Are Consistent With ICANN (Internet Corporation for Assigned Names and Numbers) Org's Commitments.

      There is no evidence to support the Requestor's conclusory assertion that ICANN (Internet Corporation for Assigned Names and Numbers) org did not act for the public benefit when it omitted the price caps from the .ORG/.INFO Renewed RAs. As discussed in further detail in the Final Determination, which is incorporated herein, on the contrary, the evidence demonstrates that ICANN (Internet Corporation for Assigned Names and Numbers) org sought community consultation regarding the proposed changes to the .ORG and .INFO RAs through a public comment process. ICANN (Internet Corporation for

Assigned Names and Numbers) org reviewed and considered all 3,700 comments received.[6] ICANN (Internet Corporation for Assigned Names and Numbers) Staff presented and discussed the key issues raised in the public comment process and correspondence, including removal of price caps, with the Board before executing the .ORG/.INFO Renewed RAs.[7]

That ICANN (Internet Corporation for Assigned Names and Numbers) org ultimately decided to proceed without price caps despite public comments opposing this approach does not render the public comment process a "sham" or otherwise demonstrate that ICANN (Internet Corporation for Assigned Names and Numbers) org failed to act for the public benefit. ICANN (Internet Corporation for Assigned Names and Numbers) Staff's careful consideration of the public comments—as reflected in its Report of Public Comments and discussion with the Board,[8] demonstrate the exact opposite, namely that the inclusion of price caps was carefully considered.

Further, the Report of Public Comments demonstrates ICANN (Internet Corporation for Assigned Names and Numbers) Staff's belief that it was acting for the public benefit by "promot[ing] competition in the registration of domain names," providing the same "protections to existing registrants" afforded to registrants of other TLDs, and treating "the Registry Operator equitably with

registry operators of new gTLDs and other legacy gTLDs utilizing the Base [RA (Registrar)]."[9] There is no support for the Requestor's assertion that ICANN (Internet Corporation for Assigned Names and Numbers) Staff's belief in this regard was based upon "conclusory statements not supported by evidence."[10] ICANN (Internet Corporation for Assigned Names and Numbers) org considered Professor Carlton's 2009 expert analysis of the Base RA (Registrar), and specifically his conclusion that limiting price increases was not necessary, and that the increasingly competitive field of registry operators in itself would serve as a safeguard against anticompetitive increases in domain name registration fees.[11]

B. The .ORG/.INFO Renewed RAs Are Consistent With ICANN (Internet Corporation for Assigned Names and Numbers) Org's Core Values.

The Board finds that there is no evidence to support the Requestor's assertion that omitting the price caps from the .ORG/.INFO Renewed RAs contradicts ICANN (Internet Corporation for Assigned Names and Numbers) org's Core Value of

> [s]eeking 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.[12]

As discussed in further detail in the Final Determination, which is incorporated herein, contrary to the Requestor's argument, ICANN (Internet Corporation for Assigned Names and Numbers) org *did* seek broad, informed participation through the public comment process for the .ORG/.INFO Renewed RAs. Moreover, ICANN (Internet Corporation for Assigned Names and Numbers) org's Core Values do not require it to accede to each request or demand made in public comments or otherwise asserted through ICANN (Internet Corporation for Assigned Names and Numbers)'s various communication channels. ICANN (Internet Corporation for Assigned Names and Numbers) org ultimately determined that ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission was best served by replacing price caps in the .ORG/.INFO Renewed RAs with other pricing protections to promote competition in the registration of domain names, afford the same "protections to existing registrants" that are afforded to registrants of other TLDs, and treat registry operators equitably.[13] Further, the Base RA (Registrar), which is incorporated in the .ORG/.INFO Renewed RA (Registrar), "was developed through the bottom-up multi-

stakeholder process including multiple rounds of public comment."[14]

The Requestor has not demonstrated that ICANN (Internet Corporation for Assigned Names and Numbers) org failed to seek or support broad participation or ascertain the global public interest. To the contrary, ICANN (Internet Corporation for Assigned Names and Numbers) org's transparent processes reflect its continuous efforts to ascertain and pursue the global public interest by migrating the legacy gTLDs to the Base RA (Registrar). Accordingly, this argument does not support reconsideration.

C. ICANN (Internet Corporation for Assigned Names and Numbers) Org's Statements Concerning The Purpose Of Public Comments Do Not Support Reconsideration.

The Board finds that there is not support for the Requestor's assertion that omitting the price caps from the .ORG/.INFO Renewed RAs is contrary to ICANN (Internet Corporation for Assigned Names and Numbers) org's statement on the public comment proceeding that the "purpose of this public comment proceeding is to obtain community input on the proposed .ORG renewal agreement."[15] As discussed in further detail in the Final Determination, which is incorporated herein, ICANN (Internet Corporation for Assigned Names and Numbers) org's decision not to include price caps in the .ORG/.INFO Renewed RAs does not

mean that ICANN (Internet Corporation for Assigned Names and Numbers) org failed to "obtain community input" or "use[]" the public comment "to guide implementation work" of ICANN (Internet Corporation for Assigned Names and Numbers) org.[16] To the contrary, it is clear that ICANN (Internet Corporation for Assigned Names and Numbers) org actively solicited community input, and carefully analyzed it as part of its efforts —in consultation with the Board—to ascertain, and then with the Board's support, to pursue, the global public interest. Additionally, the Board notes that reconsideration is available for ICANN (Internet Corporation for Assigned Names and Numbers) Staff actions that contradict ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission, Commitments, Core Values and/or established ICANN (Internet Corporation for Assigned Names and Numbers) policy(ies).[17] ICANN (Internet Corporation for Assigned Names and Numbers) org's general description of the purpose of the public comment process is not a Commitment, Core Value, established policy, nor part of ICANN (Internet Corporation for Assigned Names and Numbers) org's Mission. Accordingly, reconsideration is not supported.

D. The Requestor Has Not Demonstrated That ICANN (Internet Corporation for Assigned Names and Numbers) Org Acted Without Consideration Of Material Information.

As discussed in further detail in the

Final Determination, which is incorporated herein, there is no evidence to support the Requestor's claim that ICANN (Internet Corporation for Assigned Names and Numbers) org's analysis of the proposed removal of price caps was taken without material information.

E. The Requestor Has Not Demonstrated That It Has Been Adversely Affected By The .ORG/.INFO Renewed RAs.

The Requestor has not shown that it has been harmed by the .ORG/.INFO Renewed RAs. The Requestor asserts that it has been adversely affected by the challenged conduct because, "[a]s a domain name registrar, removal of price caps for legacy TLDs will negatively impact [the Requestor's] domain name registration business," insofar as the .ORG/.INFO Renewed RAs create an "uncertainty of price increases."[18] The Requestor has not shown that it has, in fact, been harmed by the financial uncertainty it identified in Request 19-2, nor that it has been harmed by any price increases under the .ORG/.INFO Renewed RAs. Instead, the Requestor asserts that "additional analysis is needed to determine whether" the removal of price caps in the .ORG RA (Registrar) "can result in uncompetitive practices."[19] This suggestion of further study is insufficient, at this stage, to warrant Reconsideration. The Requestor has not identified any *evidence* that it has been harmed or will be harmed by removal of the price caps, and the evidence that is

available—Professor Carlton's expert report—indicates that such harm is not expected. As noted in the Final Determination, in 2009, Professor Carlton concluded that price caps were unnecessary to protect against unreasonable increases in domain name registration fees.[20] Professor Carlton explained that "a supplier that imposes unexpected or unreasonable price increases will quickly harm its reputation[,] making it more difficult for it to continue to attract new customers. Therefore, even in the absence of price caps, competition can reduce or eliminate the incentives for suppliers to act opportunistically."[21] For these reasons, reconsideration is not warranted.

F. The Rebuttal Does Not Raise Arguments or Facts that Support Reconsideration.

The Requestor makes five arguments in its Rebuttal.[22] None support reconsideration. As discussed in further detail in the Final Determination (/en/system/files/files/reconsideration-19-2-namecheap-final-determination-21nov19-en.pdf), the Requestor's Rebuttal reiterates arguments that the Board addressed in the Proposed Determination. Essentially, the Rebuttal makes clear that the Requester relies on the assumption that legacy gTLDs should be treated differently than new gTLDs and should not migrate to the Base RA (Registrar); Requestor still offers no evidence supporting this argument, and is incorrect, as demonstrated by the legacy gTLDs that

have migrated to the Base RA (Registrar) over the past several years.

Each of the points raised in the Requestor's Rebuttal is addressed in the Final Determination, which is incorporated herein. But the Board wanted specifically to discuss here whether there was a past understanding that legacy gTLD (generic Top Level Domain) registry agreements would be renewed in the new form of agreement used by new gTLDs. All registry agreements include a presumptive right of renewal clause. This clause provides a registry operator the right to renew the agreement at its expiration provided the registry operator is in good standing (e.g., the registry operator does not have any uncured breaches), and subject to the terms of their presumptive renewal clauses.

In the course of engaging with a legacy registry operator on renewing its agreement, ICANN (Internet Corporation for Assigned Names and Numbers) org prefers to and proposes that the registry operator adopts the new form of registry agreement that is used by new gTLDs as the starting point for the negotiations. This new form includes several enhancements that benefit the domain name ecosystem such as better safeguards in dealing with domain name infrastructure abuse, emergency backend support, as well as adoption of new bilaterally negotiated provisions that ICANN (Internet Corporation for Assigned Names and Numbers) org and the gTLD (generic Top Level

Domain) Registries Stakeholder Group conduct from time to time for updates to the form agreement, and adoption of new services (e.g., RDAP) and procedures.

Although ICANN (Internet Corporation for Assigned Names and Numbers) org proposes the new form of registry agreement as a starting place for the renewal, because of the registry operator's presumptive right of renewal ICANN (Internet Corporation for Assigned Names and Numbers) org is not in a position to mandate the new form as a condition of renewal. If a registry operator states a strong preference for maintaining its existing legacy agreement form, ICANN (Internet Corporation for Assigned Names and Numbers) org would accommodate such a position, and has done so in at least one such instance.

While the prevailing policy is that all new gTLD (generic Top Level Domain) registry operators must adopt the new form of registry agreement, there is no consensus policy that prohibits a legacy registry operator from adopting the new form of the agreement.

Notwithstanding that we are denying Request 19-2, the Board acknowledges (and the Requestor points out in its Rebuttal) the recently announced acquisition of PIR, the current .ORG registry operator, and the results of that transaction is something that ICANN (Internet Corporation for Assigned Names and Numbers) organization will

be evaluating as part of its normal process in such circumstances.

This action is within ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission and is in the public interest as it is important to ensure that, in carrying out its Mission, ICANN (Internet Corporation for Assigned Names and Numbers) is accountable to the community for operating within the Articles of Incorporation, Bylaws, and other established procedures. This accountability includes having a process in place by which a person or entity materially affected by an action of the ICANN (Internet Corporation for Assigned Names and Numbers) Board or Staff may request reconsideration of that action or inaction by the Board. This action should have no financial impact on ICANN (Internet Corporation for Assigned Names and Numbers) and will not negatively impact the security, stability and resiliency of the domain name system.

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

Published on 25 November 2019

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[1] Request 19-2, § 3, at Pg. 2.

[2] *Id.* at § 3.

[3] *Id.*

[4] https://www.icann.org/en/system/files/files/reconsideration-19-2-namecheap-evaluation-icann-ombudsman-request-07sep19-en.pdf

(/en/system/files/files/reconsideration-19-2-namecheap-evaluation-icann-ombudsman-request-07sep19-en.pdf).

[5] Rebuttal in Support of Request 19-2, https://www.icann.org/resources/pages/reconsideration-19-2-namecheap-request-2019-07-22-en (/resources/pages/reconsideration-19-2-namecheap-request-2019-07-22-en).

[6] Report of Public Comments, .ORG, at Pg. 3; Report of Public Comments, .INFO, at Pg. 3.

[7] 26 July 2019 Letter, at Pg. 2.

[8] 26 July 2019 Letter, at Pg. 2.

[9] Report of Public Comments, .ORG, at Pg. 8.

[10] Request 19-2, § 8, at Pg. 12.

[11] Preliminary Analysis of Dennis Carlton Regarding Price Caps for New gTLD (generic Top Level Domain) Internet Registries, March 2009, at ¶ 12, https://archive.icann.org/en/topics/new-gtlds/prelim-report-registry-price-caps-04mar09-en.pdf (https://archive.icann.org/en/topics/new-gtlds/prelim-report-registry-price-caps-04mar09-en.pdf).

[12] Request 19-2, § 8, at Pg. 4.

[13] Report of Public Comments, .ORG, at Pg. 8; Report of Public Comments, .INFO, at Pg. 7.

[14] 26 July 2019 Letter, at Pg. 1.

[15] *Id.*

[16] *See id.*

[17] Bylaws, Art. 4 § 4.2(c). The challenged action must adversely affect the Requestor as well. *Id.*

[18] Request 19-2, § 6, at Pg. 2; *see also id*. § 10, at Pg. 13.

[19] Request 19-2, § 8, at Pg. 10.

[20] Preliminary Analysis of Dennis Carlton Regarding Price Caps for New gTLD (generic Top Level Domain) Internet Registries, March 2009, at ¶ 12, https://archive.icann.org/en/topics/new-gtlds/prelim-report-registry-price-caps-04mar09-en.pdf (https://archive.icann.org/en/topics/new-gtlds/prelim-report-registry-price-caps-04mar09-en.pdf).

[21] *Id.*

[22] Rebuttal in Support of Request 19-2, https://www.icann.org/en/system/files/files/reconsideration-19-2-namecheap-requestor-rebuttal-board-proposed-determination-18nov19-en.pdf (/en/system/files/files/reconsideration-19-2-namecheap-requestor-rebuttal-board-proposed-determination-18nov19-en.pdf).

Petillion

Annex 13

Subject: Fwd: Notice to invoke the CEP
Date: Wednesday, 20 November 2019 at 17:05:29 Central European Standard Time
From: Owen Smigelski
To: Flip Petillion, Jan Janssen

Begin forwarded message:

From: "Namecheap, Inc." Contact Information Redacted
Subject: Notice to invoke the CEP
Date: November 18, 2019 at 9:32:04 PM PST
To: independentreview@icann.org
Cc: Rick Kirkendall Contact Information Redacted, Hillan Klein Contact Information Redacted, "Namecheap, Inc." Contact Information Redacted

Dear ICANN-

Namecheap intends to file a request for independent review and hereby invokes the cooperative engagement process. This is in regards to the ICANN Board Action on Proposed Determination on Reconsideration Request 19-2 on 3 November 2019. Namecheap maintains that the following provisions of the ICANN Bylaws were violated by ICANN:

- Commitment (iv)(a)
- Core Value (ii)

In addition, the Board Action violates two ICANN functions that have their origin in the Commitments and Core Values, specifically ICANN's Public Comment Opportunities page and the the public comment period for the Proposed Renewal of .org Registry Agreement.

Namecheap's point of contact for the resolution of this issue is:

Owen Smigelski
Contact Information Redacted

Please confirm receipt of this request.

Regards,

Owen

Owen Smigelski
Head of ICANN Compliance & Relations
Namecheap, Inc.
Contact Informat on Redacted

Petillion

Annex 14

Petillion

Attorneys - Advocaten - Avocats

Flip Petillion
fpetillion@petillion law
Contact Information Redacted

10 December 2019

ICANN
Attn: Board, Ms. AmyStathos, Mr. John Jeffrey
12025 Waterfront Drive, Suite 3000
Los Angeles, CA 90094-2536, USA

By email: independentreview@icann.org

Dear Members of the ICANN Board,
Dear Ms. Stathos and Mr. Jeffrey,

Re: Cooperative Engagement Process on the renewed Registry Agreements for .org, .info and .biz

We write you on behalf of Namecheap, Inc. (Namecheap).

The present letter completes Namecheap's notice to invoke the cooperative engagement process (CEP) of 18 November 2019. We hereby wish to inform you of the decisions that are being challenged by Namecheap for which Namecheap seeks resolution through the CEP.

Namecheap challenges (i) all actions and inactions by ICANN Staff and the ICANN Board that resulted in the renewal of registry agreements ("RAs") for legacy gTLDs (including .org, .info and .biz gTLDs) without maintaining the historic price caps, and (ii) ICANN's refusal to reverse this decision through the adoption of the Board's final determination on Reconsideration Request 19-2. These actions and inactions were taken without safeguarding ICANN's openness and transparency obligations. ICANN's decisions resulting in the renewal of the RAs go against the interests of the Internet community as a whole. ICANN's actions

and inactions violate various provisions aimed at protecting those interests set forth in ICANN's Articles of Incorporation, Bylaws, policies, and the renewal terms of the RAs.

In particular, Namecheap considers that ICANN's actions and inactions are in violation of Article III of the Amended and Restated Articles of Incorporation of ICANN and of Articles 1(2), 2(1), 2(3), 3(1) and 4 of the ICANN Bylaws. ICANN has also violated Section 4.2 of the RAs of 22 August 2013 of which Namecheap, as well as others, are third party beneficiaries.

Yours sincerely,

Flip Petillion

Jan Janssen*

Petillion

Annex 15

Petillion
Attorneys - Advocaten - Avocats

Flip Petillion
fpetillion@petillion law
Contact Information Redacted

8 January 2020

ICANN
Attn: DIDP team, Ms. AmyStathos, Mr. John Jeffrey
12025 Waterfront Drive, Suite 3000
Los Angeles, CA 90094-2536, USA

By email: didp@icann.org
Cc: Contact Information Redacted

Dear Madam,
Dear Sir,

Re: Request for Document Disclosure

Pursuant to ICANN's Document Information Disclosure Policy (DIDP), on behalf of Namecheap, Inc. (Namecheap), we hereby request the documents described below.

1. Relevant Background

Namecheap is an ICANN-accredited registrar with an important client base of domain name holders in the .ORG, .BIZ and .INFO gTLDs. Namecheap has been challenging ICANN's decisions with respect to the renewal of the .ORG, .BIZ and .INFO Registry Agreements, the removal of the price caps for these gTLDs, and Namecheap is challenging ICANN's actions and inactions with respect to the change of control of the registry operator for .ORG. It is unclear how ICANN has balanced the competing interests of the relevant stakeholders in its actions and inactions pertaining to .ORG, .BIZ and .INFO Registry Agreements that greatly impact the position of the registrars and registrants, such as Namecheap and their customers, as well as all Internet users.

2. Information Requested

Namecheap respectfully requests that ICANN produce all documents directly and indirectly relating to the negotiations pertaining to the reassignment, renewal and amendments of the .ORG, .BIZ and/or .INFO Registry Agreements, including but not limited to:

1. An executed copy of all Registry Agreements (and amendments thereto) for the original gTLDs (.COM, .NET, .ORG) and the gTLDs that were delegated pursuant to ICANN Resolution 00.89 of 16 November 2000, including those agreements that have been terminated, reassigned or renewed;

2. All correspondence between ICANN and the registry operators (and their representatives) in relation to the .ORG, .BIZ and/or .INFO Registry Agreements;

3. All requests from the registry operators (and their representatives) in relation to the reassignment of the .ORG, .BIZ and/or .INFO Registry Agreements;

4. All requests from the registry operators (and their representatives) in relation to the renewal of the .ORG, .BIZ and/or .INFO Registry Agreements;

5. All requests from the registry operators (and their representatives) in relation to the modification of the price caps in the .ORG, .BIZ and/or .INFO Registry Agreements;

6. All requests from the registry operators (and their representatives) in relation to the removal of the price caps in the .ORG, .BIZ and/or .INFO Registry Agreements;

7. Any document showing the reasons for ICANN to accept to examine requests for such renewal, modification and removal;

8. Any document showing the reasons for ICANN to accept requests for such renewal, modification and removal;

9. Any document showing that ICANN has considered, and made a reasoned decision, as to the question whether the renewal of the .ORG registry agreement, including the removal of the price cap, is in line with the requirement for the .ORG registry fee charged to accredited registrars to be as low as feasible consistent with the maintenance of good quality service, as this requirement was laid out in the DNSO policy and in the request for proposals for reassignment of the .ORG gTLD, as imposed in 2002, never modified since, and still applicable in 2019;

10. All exchanges of communication between ICANN and the registry operators discussing such renewal, modification and removal;

11. All communications between ICANN staff and the ICANN Board in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests;

12. All communications between ICANN staff and individual ICANN Board members in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests;

13. All communications between ICANN staff in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests;

14. All communications between ICANN Board members in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests;

15. All communications between ICANN staff or ICANN Board member and any other person or organisation other than ICANN staff or ICANN Board members in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests;

16. All documents related to the preparation of the Report of Public Comments for Proposed Renewal of .ORG, .BIZ and/or .INFO Registry Agreements, including summaries and analysis, including the documents exchanged between ICANN staff and the ICANN Board, between ICANN staff and individual ICANN Board members, between ICANN staff, between ICANN Board members, and between ICANN staff or ICANN Board members and any other person or organisation other than ICANN staff or ICANN Board members; and

17. Any and all authorisations granted by, and communications with, government officials in relation to the delegation, reassignment, renewal, amendments and/or operation of the .ORG, .BIZ and/or .INFO Registry Agreements.

Namecheap further respectfully requests that ICANN produce all documents directly and indirectly relating to all economic studies, impact studies, and other studies ICANN has commissioned, examined and/or performed with respect to competition and/or pricing of TLDs (in particular original gTLDs (.COM, .NET, .ORG) and gTLDs that were delegated pursuant to ICANN Resolution 00.89 of 16 November 2000 (e.g., .BIZ, .INFO)), and with respect to vertical integration between registries and registrars, including but not limited to:

1. The requests for proposals and expressions of interest for performing the studies;

2. The selection criteria of the service providers, performing the studies;

3. The draft reports of the studies;

4. The reasons given by the authors of the studies to change draft reports before issuing final studies;

5. The final studies;

6. The names and qualifications of the authors and participants of the studies;

7. The documentation on which the studies were based;

8. The contractual arrangements with the authors of the studies;

9. The price paid by ICANN for the studies;

10. Any document containing ICANN's analysis and/or summary of these studies and of the comments made in response to these studies; and

11. All communications between ICANN and the authors and participants of the studies.

Namecheap also respectfully requests that ICANN produce all documents directly and indirectly relating to the change of control of Public Interest Registry, including but not limited to:

1. All correspondence between ICANN and Public Interest Registry, their representatives, their related companies and organisations relating to the change of control of Public Interest Registry;

2. All communications between ICANN staff and the ICANN Board in relation to the change of control of Public Interest Registry;

3. All communications between ICANN staff and individual ICANN Board members in relation to the change of control of Public Interest Registry;

4. All communications between ICANN staff in relation to the change of control of Public Interest Registry;

5. All communications between ICANN Board members in relation to the change of control of Public Interest Registry; and

6. All communications between ICANN staff or ICANN Board members and any other person or organisation other than ICANN staff or ICANN Board member.

The information requested herein is not publicly available and is therefore a proper subject for a DIDP Request.

The information does not meet any of the defined conditions for nondisclosure:

- The information was not, or ought not to be, provided by or to a government or international organisation in the expectation that the information will be kept confidential;
- The information would not materially prejudice ICANN's relationship with a government or international organisation;
- The information is not likely to compromise the integrity of ICANN's deliberative or decision-making process. Indeed, ICANN is required by its Articles of Incorporation and Bylaws to "*operate to the maximum extent feasible in an open and transparent manner*", including by "*employing open and transparent policy development mechanisms*", providing "*detailed explanations of the basis for decisions*" and "*making decisions by applying documented policies neutrally and objectively*". Without full transparency, ICANN would seriously compromise the integrity of its deliberative and decision-making processes. Disclosing the requested information can only improve ICANN's deliberative and decision-making processes. As a result, there can be no reasonable justification for refusing to publish the requested documents;
- The information is not likely to compromise the integrity of the deliberative or decision-making process between ICANN and its constituencies or other entities, for the same reasons as noted above;
- The information is unrelated to any personnel, medical, contractual, remuneration, or similar records relating to an individual's personal information; at most some of the information requested may relate to payments made by ICANN to service providers that have a reasonable opportunity to offer their services via an organisation or company;
- The information is not likely to impermissibly prejudice any parties' commercial, financial, or competitive interests. Additionally, to the extent that any of the requested documents contain such information, and the information is unrelated to the .ORG and/or .INFO Registry Agreements, such information can be redacted before the publication of the documents;
- The information is not confidential business information or internal policies or procedures and cannot be qualified as such in a contractual context without violating ICANN's transparency obligations;

- The information will not endanger the life, health, or safety of any individual nor prejudice the administration of justice;
- The information is not subject to attorney-client privilege;
- The information is not drafts of communications;
- The information is not related in any way to the security or stability of the Internet;
- The information is not trade secrets or financial information;
- The information request is reasonable, not excessive or overly burdensome, compliance is feasible, and there is no abuse.

Moreover, to the extent any of the information does fall into one of the defined conditions for non-disclosure, ICANN should nonetheless disclose the information, as the public interest in disclosing the information outweighs any harm that might be caused by disclosure. Indeed, there can be no harm from disclosing the information, as the ICANN community is entitled to know the standards by which ICANN (together with any consultants) makes decisions that determine the control over internet resources as crucial as TLDs that were delegated in an environment with very few competitors to companies and organisations that have been able to profit from a first-mover advantage. ICANN's transparency obligation, described by ICANN's own Bylaws and Articles of Incorporation, requires publication of information related to the process, facts, and analysis used by (individual members of) ICANN's Staff and Board in making those decisions.

Finally, unless the requested information is published, the ICANN community will have no way to evaluate whether ICANN has met its obligations to act fairly, for the benefit of the community, and in accord with its own policies.

3. Conclusion

In short, because there is no "compelling reason for confidentiality" and numerous compelling reasons for publications, and because publication is required by ICANN's own Bylaws and Articles of Incorporation, Namecheap urges publication of the requested information, including in particular the specific documents described above.

Yours sincerely,

Flip Petillion

Jan Janssen*

Petillion

Annex 16

To: Flip Petillion on behalf of Namecheap Inc.

Date: 7 February 2020

Re: Request No. 20200108-1

This is in response to your request for documentary information (Request), which was submitted on 8 January 2020 through the Internet Corporation for Assigned Names and Numbers' (ICANN organization or ICANN org) Documentary Information Disclosure Policy (DIDP). For reference, a copy of your Request is attached to the email forwarding this Response.

Items Requested

Your Request seeks the disclosure of 34 categories of documentary information which are set forth below as they were presented in your Request.

Part 1:

Part 1 of your Request seeks "all documents directly and indirectly relating to the negotiations pertaining to the reassignment, renewal and amendments of the .ORG, .BIZ, and/or .INFO Registry Agreements, including but not limited to:"

1. An executed copy of all Registry Agreements (and amendments thereto) for the original gTLDs (.COM, .NET, .ORG) and the gTLDs that were delegated pursuant to ICANN Resolution 00.89 of 16 November 2000, including those agreements that have been terminated reassigned or renewed.

2. All correspondences between ICANN and the registry operators (and their representatives) in relation to the .ORG, .BIZ, and/or .INFO Registry Agreements.

3. All requests from the registry operators (and their representatives) in relation to the reassignment of the .ORG, .BIZ and/or .INFO Registry Agreements.

4. All requests from the registry operators (and their representatives) in relation to the renewal of the .ORG, .BIZ and/or .INFO Registry Agreements.

5. All requests from the registry operators (and their representatives) in relation to the modification of the price caps in the .ORG, .BIZ and/or .INFO Registry Agreements.

6. All requests from the registry operators (and their representatives) in relation to the removal of the price caps in the .ORG, .BIZ and/or .INFO Registry Agreements.

7. Any document showing the reasons for ICANN to accept to examine requests for such renewal, modification and removal.

8. Any document showing the reasons for ICANN to accept requests for such renewal, modification and removal.

9. Any document showing that ICANN has considered, and made a reasoned decision, as to the question whether the renewal of the .ORG registry agreement, including the removal of the price cap, is in line with the requirement for the .ORG registry fee charged to accredited registrars to be as low as feasible consistent with the maintenance of good quality service, as this requirement was laid out in the DNSO policy and in the request for proposals for reassignment of the .ORG gTLD, as imposed in 2002, never modified since, and still applicable in 2019.

10. All exchanges of communication between ICANN and the registry operators discussing such renewal, modification and removal.

11. All communications between ICANN staff and the ICANN Board in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests.

12. All communications between ICANN staff and individual ICANN Board members in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests.

13. All communications between ICANN staff in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests.

14. All communications between ICANN Board members in relation to the .ORG, .BIZ, and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests.

15. All communications between ICANN staff or ICANN Board member and any other person or organization other than ICANN staff or ICANN Board members in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests.

16. All documents related to the preparation of the Report of Public Comments for Proposed Renewal of .ORG, .BIZ and/or .INFO Registry Agreements, including summaries and analysis, including the documents exchanged between ICANN staff and ICANN Board, between ICANN Board members, and between ICANN

staff or ICANN Board members and any other person or organization other than ICANN staff or ICANN Board members.

17. Any and all authorizations granted by, and communications with, government officials in relation to the delegation, reassignment, renewal, amendments and/or operation of the .ORG, .BIZ and/or .INFO Registry Agreements.

Part 2:

Part 2 of your Request seeks "all documents directly and indirectly relating to economic studies, impact studies, and other studies ICANN has commissioned, examined and/or performed with respect to competition and/or pricing of TLDs (in particular original gTLDs (.COM, .NET, .ORG) and gTLDs that were delegated pursuant to ICANN Resolution 00.89 of 16 November 2000 (e.g., .BIZ, .INFO)), and with respect to vertical integration between registries and registrars, including but not limited to:"

1. The requests for proposals and expressions of interest for performing the studies.

2. The selection criteria of the service providers, performing the studies.

3. The draft reports of the studies.

4. The reasons given by the authors of the studies to change draft reports before issuing final studies.

5. The final studies.

6. The names and qualifications of the authors and participants of the studies.

7. The documentation on which the studies were based.

8. The contractual arrangement with the authors of the studies.

9. The price paid by ICANN for the studies.

10. Any document containing ICANN's analysis and/or summary of these studies and of the comments made in response to these studies.

11. All communication between ICANN and the authors and participants of the studies.

Part 3:

Part 3 of your Request seeks "all documents directly and indirectly relating to the change of control of Public Interest Registry, including but not limited to:"

1. All correspondences between ICANN and Public Interest Registry, their representatives, their related companies and organizations relating to the change of control of Public Interest Registry.

2. All communications between ICANN staff and the ICANN Board in relation to the change of control of Public Interest Registry.

3. All communications between ICANN staff and individual ICANN Board members in relation to the change of control of Public Interest Registry.

4. All communications between ICANN staff in relation to the change of control of Public Interest Registry.

5. All communications between ICANN Board members in relation to the change of control of Public Interest Registry.

6. All communications between ICANN staff or individual ICANN Board members and any other person or organization other than ICANN staff of ICANN Board member.

Response

I. Background Information

ICANN org makes available all Registry Agreements (RAs) executed by ICANN org through the Registry Agreements page as a matter of course. Each top-level domain (TLD) has its own RA page detailing all RAs signed to date, including all appendices, amendments and renewals.

A. Historic .BIZ, .INFO and .ORG Registry Agreements

.BIZ Registry Agreement
On 11 May 2001 (2001 .BIZ RA), ICANN org entered into an RA with NeuLevel to operate the .BIZ generic top-level domain (gTLD). (See https://www.icann.org/resources/agreement/biz-archive-2001-05-11-en.) The 2001 .BIZ RA was amended on 18 June 2003. On 8 December 2006 (2006 .BIZ RA), ICANN org entered into an RA with NeuStar for the operation of the .BIZ gTLD which was subsequently amended on 27 April 2010 and renewed on 22 August 2013 (2013 .BIZ RA) and 30 June 2019 (2019 .BIZ RA).

.INFO Registry Agreement
On 11 May 2001 (2001.INFO RA), ICANN org entered into an agreement with Afilias under which Afilias would operate the .INFO gTLD. The 2001 .INFO RA was renewed on 8 December 2006 (2006 .INFO RA) and amended on 26 May 2010. The 2006 .INFO RA was subsequently renewed on 15 September 2010 (2010 .INFO RA), on 22 August 2013 (2013 .INFO RA) and 30 June 2019 (2019 .INFO RA).

.ORG Registry Agreement

On 28 September 1999, ICANN org announced a tentative agreement with the United States Department of Commerce and Network Solutions, Inc. (NSI) on a series of agreements. (*See* https://archive icann org/en/nsi/nsi-registry-agreement-04nov99.htm.) After written and oral public comments, these agreements were approved by the ICANN Board on 4 November 1999. (*Id*.) One of these agreements was a registry agreement (RA) under which NSI would operate the registries for the .COM, .NET, and .ORG (gTLDs) according to the requirements stated in the RA and to be developed through the ICANN consensus-based process. (*Id*.)

On 25 May 2001, ICANN org terminated its agreement with NSI and entered into individual RAs with Verisign, Inc. for .COM, .NET and .ORG. (*See* https://www icann org/resources/unthemed-pages/termination-nsi-agreement-2001-05-25-en.) Beginning in April 2002, ICANN org engaged in a Request for Proposal (RFP) process to identify a successor operator for .ORG. (*See* https://archive.icann.org/en/tlds/org/ and https://archive.icann.org/en/tlds/org/rfp-20may02 htm.) Associated documents regarding the RFP process and selection and approval of Public Interest Registry (PIR) as the successor operator for .ORG are available at the webpage entitled "Materials on .org Reassignment." On 2 December 2002, ICANN org entered into an RA with PIR for the operation of .ORG, which was subsequently renewed on 8 December 2006 (the 2006 .ORG RA), on 22 August 2013 (the 2013 .ORG RA) and on 30 June 2019 (the 2019 .ORG RA).

B. The 2006 .BIZ, .INFO and .ORG Renewals

On 28 June 2006, ICANN org posted the .BIZ, .INFO and.ORG RAs for public comment. (*See* https://www icann org/news/announcement-2-2006-06-27-en and https://www icann org/news/announcement-3-2006-07-28-en.) Following a review of the public comments, ICANN org prepared a Draft Summary of Public Comments on the Proposed .BIZ, .INFO, and .ORG Agreements (Draft Summary) for the Board's review. At the Board's request, on 11 September 2006, the Draft Summary was posted for further public comment. (*See* https://www icann org/news/announcement-2-2006-09-11-en.) On 27 September 2006, the General Counsel and Secretary of ICANN issued a Secretary's Notice requesting the registries (for .BIZ, .INFO and .ORG) to respond to the issues raised in the public comments. (See https://www.icann.org/resources/board-material/secretarys-notice-2006-09-27-en.) On 12 October 2006, ICANN org posted the registries' responses to the public comments. (*See* https://www icann org/news/announcement-2-2006-10-12-en.) After having considered the public comments and the responses from the registries, the ICANN Board requested ICANN org to renegotiate the proposed agreements. (*See* https://www.icann.org/resources/board-material/minutes-2006-10-18-en.) On 24 October 2006, ICANN org posted the revised .BIZ, .INFO and .ORG RAs for public comment. (*See* https://www icann org/news/announcement-2006-10-24-en.) Having considered the revised 2006 .BIZ, .INFO and .ORG RAs, the public comments received, and the registry responses to the public comments, the ICANN Board approved the

2006 .BIZ, .INFO and .ORG RAs (as proposed and posted during the public comment period for the revised RAs). (*See* https://www.icann.org/resources/board-material/minutes-2006-12-08-en.)

C. The 2013 .BIZ, .INFO and .ORG Renewals

On 3 June 2013, ICANN org posted for public comment the proposed 2013 .BIZ and .INFO RAs and on 21 June 2013, ICANN org posted for public comment the proposed 2013 .ORG RA. (*See* .BIZ public comment proceeding, .INFO public comment proceeding, and .ORG public comment proceeding.) Following the close of the public comment period, ICANN org published a summary and analysis of the comments. (*See* https://www.icann.org/en/system/files/files/report-comments-biz-renewal-13aug13-en.pdf, https://www.icann.org/en/system/files/files/report-comments-info-renewal-13aug13-en.pdf and https://www.icann.org/en/system/files/files/report-comments-org-renewal-13aug13-en.pdf.) On 22 August 2013 approved the 2013 .BIZ RA, the 2013 .INFO RA, and the 2013 .ORG RA. (*See* https://www.icann.org/resources/board-material/resolutions-2013-08-22-en.)

D. The 2019 .BIZ, .INFO and .ORG Renewals

The 2019 .BIZ, .INFO and .ORG RAs were the result of bilateral negotiations between ICANN org and Registry Services, LLC (.BIZ), Afilias Limited (.INFO) and PIR (.ORG), respectively, and are based on the base generic top level domain (gTLD) Registry Agreement updated on 31 July 2017 (Base RA). (*See* Public Comments Proceedings for .BIZ, .INFO and .ORG.) In an effort to account for the specific nature of the .BIZ, .INFO and .ORG TLDs, relevant provisions in the 2013 .BIZ, .INFO and .ORG RAs have also been carried over to the 2019. BIZ, .INFO and .ORG RAs. (*Id*.) As a result, the 2019 .BIZ, .INFO and .ORG RAs share similar terms, as well as differences with the 2013 .BIZ, .INFO and .ORG RAs and the Base RA. (*Id*.) A summary of these material differences are laid out in the Proposed Renewal of the .biz Registry Agreement, the Proposed Renewal of the .info Registry Agreement, and the Proposed Renewal of .org Registry Agreement public comment proceeding. Following a review of the public comments of the .BIZ, .INFO and .ORG RA renewals, ICANN org published a summary and analysis of the public comments, and on 30 June 2019 executed the 2019 .BIZ RA, the 2019 .INFO RA, and the 2019 .ORG RA. (*See* .BIZ Staff Report of Public Comment Proceeding, .INFO Staff Report of Public Comment Proceeding, and .ORG Staff Report of Public Comment Proceeding.)

E. Proposed Change of Control of PIR

On 13 November 2019, the proposed acquisition of PIR by Ethos Capital was announced by PIR and the Internet Society (ISOC). (*See* https://www.icann.org/news/blog/org-update.) Under the 2019 .ORG RA, PIR must obtain ICANN's prior approval before any transaction that would result in a change of control of the registry operator. On 14 November 2019, PIR formally notified ICANN org

of the proposed transaction and sought the requisite approval from ICANN. (*Id*.) Typically, requests to ICANN for approval of a change of control are confidential. In this case, ICANN org asked PIR for permission to publish the notification, but PIR initially declined. (*Id*.)

On 9 December 2019, ICANN org sent PIR a Request for Additional Information to ensure that ICANN org has a full understanding of the proposed transaction. (*See* https://www icann org/news/blog/org-update.) Separately, on the same date, ICANN org also sent a letter to both PIR and ISOC asking them to: (1) reconsider publishing the 14 November 2019 notification to ICANN relating to the proposed transaction; and (2) consider publishing ICANN org's Request for Additional Information along with PIR's response. (*See* https://www.icann.org/en/system/files/correspondence/jeffrey-to-sullivan-nevett-09dec19-en pdf.)

On 20 December 2019, PIR submitted confidential responses to the ICANN org's Request for Additional Information regarding the proposed acquisition of PIR by Ethos Capital. On 10 January 2020, ICANN org received a revised version of PIR's responses to the Request for Additional Information (Revised Submission). With the agreement of PIR, ISOC and Ethos Capital, ICANN org published the Revised Submission along with PIR's notification of the proposed transaction and ICANN org's Request for Additional Information. (*See* https://www.icann.org/news/announcement-2020-01-11-en and https://www.icann.org/en/system/files/files/pir-isoc-ethos-capital-10jan20-en.pdf.)

On 17 January 2020, ICANN org sent a letter to PIR confirming the agreement between ICANN org and PIR to extend the deadline to 17 February 2020 for ICANN org to provide or withhold consent to PIR's proposed change of control. (*See* https://www.icann.org/en/system/files/files/icann-to-pir-17jan20-en.pdf.)

On 23 January 2020, ICANN org received a request 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 in order to "analyze the impact to the nonprofit community, including ICANN." (*See* https://www.icann.org/news/announcement-2020-01-30-en and https://www icann org/en/system/files/correspondence/ca-ago-to-icann-board-23jan20-en pdf.) On 30 January 2020, ICANN org sent a letter to PIR informing PIR about the CA-AGO's request for information and documents relating to the proposed transaction, providing notice to PIR (pursuant to the terms of the PIR RA) that the CA-AGO had requested certain confidential PIR documents, and requesting that PIR agree to extend ICANN's deadline to respond to PIR's proposed change of control. (*See* https://www icann org/en/system/files/correspondence/jeffrey-to-nevett-30jan20-en pdf.) PIR's counsel responded to the letter on 30 January 2020.

F. The New gTLD Program and Studies on Pricing and Vertical Integration

In 2005, ICANN org's Generic Names Supporting Organization (GNSO) undertook a policy development process to consider expanding the Domain Name System (DNS) by

introducing new gTLDs. (*See* https://newgtlds.icann.org/en/about/program.) In 2007, the GNSO concluded that "ICANN must implement a process that allows the introduction of new [gTLDs]." (*See* GNSO Final Report: Introduction of New Generic Top-Level Domains, 8 Aug. 2007, https://gnso icann org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07 htm#_Toc43798015.) Accordingly, ICANN org established and implemented the New gTLD Program, "enabling the largest expansion of the [DNS]." (*See* https://newgtlds.icann.org/en/about/program.)

"An important element of ICANN [org's] consideration of the introduction of new gTLDs was consumer benefit as well as pricing issues." (*See* https://www.icann.org/news/announcement-2009-03-04-en.) In 2009, ICANN org commissioned and retained an independent third-party economist, Dennis W. Carlton, to prepare reports relating to competition and pricing issues for new gTLDs. (*Id*.) On 4 March 2009, ICANN org posted for public comment two preliminary reports prepared by Dennis W. Carlton, Professor of Economics at the University of Chicago entitled Preliminary Report of Dennis Carlton Regarding Impact of New gTLDs on Consumer Welfare and Preliminary Analysis of Dennis Carlton Regarding Price Caps for New gTLD Internet Registries. On 17 April 2009, Dr. Michael Kende prepared a report on behalf of AT&T commenting on Professor Carlton's two preliminary reports entitled Assessment of ICANN Preliminary Reports on Competition and Pricing. (*See* https://www.icann.org/news/announcement-2009-06-06-en.) On 6 June 2009, ICANN org published the final reports by Professor Carlton relating to the introduction of new gTLDs for public comment. (*Id*.) The first report, entitled Report of Dennis Carlton Regarding ICANN's Proposed Mechanism for Introducing New gTLD combines and updates Professor Carlton's two preliminary reports from March 2009 that address ICANN org's proposed mechanism for introducing new gTLDs. (*Id*.) The second report, entitled Comments on Michael Kende's Assessment of Preliminary Reports on Competition and Pricing responds to Dr. Michael's Kende's submitted on 17 April 2009.

In the fall of 2009, ICANN org retained the services of economists, Michael Katz and from the University of California, Berkeley and Professor Greg Rosston from Stanford University to conduct further economic analysis. (*See* https://www icann org/en/system/files/bm/rationale-economic-studies-21mar11-en pdf at pg. 3.) On 16 June 2010, ICANN org published the study entitled An Economic Framework for the Analysis of the Expansion of the Generic Top-Level Domain Names performed by Greg Rosston and Michael Katz for public comment. (*See* https://www.icann.org/resources/pages/economic-framework-2010-06-16-en.) On 3 December 2010, ICANN org posted a follow-up report by Greg Rosston and Michael Katz entitled Economic Considerations in the Expansion of the Generic Top-Level Domain Names, Phase II (*see* https://www icann org/news/blog/new-gtld-economic-study).

Pursuant to Affirmation of Commitments (AoC) and later ICANN's Bylaws, selected ICANN community members conducted the Competition, Consumer Trust and Consumer Choice (CCT) Review. (*See* https://community.icann.org/pages/viewpage.action?pageId=58727320.) As part of the

CCT Review of the New gTLD Program, the ICANN Board adopted certain metrics recommended by an Implementation Advisory Group made up of ICANN community members. (*See* https://www icann org/resources/board-material/resolutions-2015-02-12-en#1 e.) Among the metrics were a subset of three identified as best being measured by an independent economic study. (*See* https://www icann org/public-comments/competitive-effects-assessment-2015-09-28-en.)

On 27 March 2014, the ICANN Board adopted resolutions 2014 03 27 22 – 2014 03 27 26 for the collection of benchmarking metrics for the New gTLD Program to support the future AoC CCT Review. Resolution 2014 03 27 25 specifically asks ICANN org to commission an economic study with the aim of establishing a baseline of competitive effects in the domain name marketplace. (*See* https://www icann org/public-comments/competitive-effects-assessment-2015-09-28-en.) On 8 September 2014, ICANN org conducted an open Request for Proposals (RFP) for one or more provider(s) to conduct an economic study examining pricing trends and other competition indicators in the global DNS market. (*See* https://www.icann.org/news/announcement-2014-09-08-en.) In February 2015, ICANN org signed a contract with Analysis Group to conduct the study. (*See* https://www icann org/news/announcement-2-2015-09-28-en.) On 28 September 2015, ICANN org published Phase I Assessment of the Competitive Effects Associated with the New gTLD Program (Phase I Assessment) report for public comment. (See https://www.icann.org/public-comments/competitive-effects-assessment-2015-09-28-en.) The public comments were summarized and analyzed in ICANN org's staff report which also helped inform the design for the Phase II assessment report. On 11 October 2016, ICANN org published Phase II Assessment of the Competitive Effects Associated with the New gTLD Program (Phase II Assessment) report for public comment with an intent to solicit the public's input on both Analysis Group's methodology and findings, as well as provide the CCT-Review Team (CCT-RT) with these findings to consider in its analysis of the New gTLD Program's impact on competition in the domain name marketplace. (*Id*.) On 21 December 2016, ICANN published its staff report of the Phase II comments.

G. The New gTLD Program and Vertical Integration

The issue of vertical integration of registries arose as a result of ICANN org's evaluation of the economic relationship between registries and registrars in developing the implementation details for the New gTLD Program as well as concerns expressed by members of the ICANN community. (*See* https://gnso icann org/en/group-activities/inactive/2010/vertical-integration-wg and https://gnso icann org/sites/default/files/filefield_8013/report-04dec09-en pdf at pg. 4.) At the request of the ICANN community, ICANN org retained the research firm Charles River Associates (CRA) International, which delivered a report on 23 October 2008, commonly referred to as the CRA Report. (*See* https://gnso icann org/en/group-activities/inactive/2010/vertical-integration-wg.) The CRA Report recommended that ICANN org consider changing its current practice of prohibiting structural and contractual separation between registries and registrars, and the functions that are

performed by these different participants in the distribution chain for domain name registration services. (*See* https://gnso.icann.org/sites/default/files/filefield_8013/report-04dec09-en pdf at pg. 4.)

On 4 December 2009, the GNSO published an Issues Report on Vertical Integration Between Registries and Registrars. On 28 January 2010, the GNSO Council approved a Policy Development Process (PDP) on the topic of vertical integration between registries and registrars and, on 10 March 2010, approved the Vertical Integration Working Group (Vertical Integration WG) Charter. (*See* https://gnso icann org/en/council/resolutions#20100310-1.) The Charter states the Vertical Integration WG "shall evaluate and propose policy recommendations for new gTLDs and existing gTLDs" and expect "to define the range of restrictions on vertical separation that are currently in effect, to serve as a baseline to evaluate future proposals." (*See* Vertical Integration Working Group Charter.) Taking into consideration studies and having heard from industry participants about the possible benefits and detriments of choices related to the ownership integration or non-integration, on 23 July 2010, the Vertical Integration WG published its Initial Report on Vertical Integration Between Registrars and Registries (Initial Report) for public comment. (*See* https://community icann org/display/gnsovertint/Vertical+Integration+Resources; and https://gnso.icann.org/sites/default/files/filefield_12297/transcript-vertical-integration-economists-29apr10-en.pdf.) Following a review the comments, on 18 August 2010, the GNSO Council published a summary and analysis of the comments and a Revised Initial Report on Vertical Integration Between Registrars and Registries. (*See* https://forum icann org/lists/vi-pdp-initial-report/pdfVlNqjfbciA pdf.)

On 9 November 2010, the Vertical Integration WG delivered to the GNSO Council its Phase I Interim Report Vertical Integration Final (Phase I Interim Report) describing the results of the first phase of its deliberations. (*See* https://gnso icann org/en/council/resolutions#20101208-1.) While the WG developed a number of proposals to address vertical integration for the New gTLD Program, it was unable to reach consensus as to which one to recommend for the first round of new gTLD applications. (*See* Phase I Interim Report pg. 3.)

In the absence of guidance or policy from the GNSO Council, the ICANN Board voted to generally allow new gTLD registry operators to own registrars and has opted not to create rules prohibiting registrars from applying for or operating new gTLD registries. (*See* https://www icann org/news/announcement-2010-11-09-en.)

II. Namecheap's DIDP Request

The DIDP is a mechanism, developed through community consultation, to ensure that information contained in documents concerning ICANN organization's operational activities, and within ICANN org's possession, custody, or control, is made available to the public unless there is a compelling reason for confidentiality. (*See* https://www.icann.org/resources/pages/didp-2012-02-25-en.)

Consistent with its commitment to operating to the maximum extent feasible in an open and transparent manner, ICANN org has published process guidelines for responding to requests for documents submitted pursuant to the DIDP (DIDP Response Process). In responding to this DIDP, ICANN org followed the DIDP Response Process and upon receipt of the request consulted with ICANN personnel who may have responsive documentary information and searched for documents that may be responsive to the items requested. ICANN org has evaluated the responsive documentary information found to date, and considered whether any of those responsive documents that are not already public are subject to any of the Defined Conditions for Nondisclosure (Nondisclosure Conditions) under the DIDP, and whether the public interest outweighs the potential harm in disclosure of the documents that are subject to one or more DIDP Nondisclosure Conditions.

The DIDP is an example of ICANN's commitment to supporting transparency and accountability by setting forth a procedure through which documents concerning ICANN org's operational activities that are not already publicly available are made available unless there is a compelling reason for confidentiality. (*See* https://www.icann.org/resources/pages/didp-2012-02-25-en.) "The DIDP is not a litigation tool . . ." (*see* https://www icann org/en/system/files/files/determination-despegar-online-et-al-11oct14-en pdf). Nevertheless, and contrary to the intent of the DIDP process, the Items sought in your DIDP Request are overly broad, vague and voluminous in nature, and the requests seek production of "all documents" or "all communications," which is "terminology typically used in discovery requests in litigation and wholly inapplicable in the DIDP context." (*Id.)* Neither the DIDP nor ICANN's Commitments and Core Values supporting transparency and accountability obligates ICANN org to make public every document in its possession.

Notwithstanding the questionable nature of your DIDP Request, ICANN org responds as follows.

Part 1: Item No. 1

Item No. 1 seeks "[a]n executed copy of all Registry Agreements (and amendments thereto) for the original gTLDs (.COM, .NET, .ORG) and the gTLDs that were delegated pursuant to ICANN Resolution 00.89 of 16 November 2000, including those agreements that have been terminated reassigned or renewed."

As a preliminary matter, it should be noted that Resolution 00.89 did not delegate any gTLDs; instead, the resolution selected the proposals for negotiations toward appropriate agreements between ICANN org and the registry operator or sponsoring organization, or both: (i) JVTeam (.BIZ); (ii) Afilias (.INFO); (iii) Global Name Registry (.NAME); (iv) RegistryPro (.PRO); (v) Museum Domain Management Association (.MUSEUM); (vi) Société Internationale de Télécommunications Aéronautiques (.AERO); and (vii) Cooperative League of the USA dba National Cooperative Business Association (.COOP).

As stated above, ICANN org makes available all RAs executed by ICANN org through the Registry Agreements page as a matter of course. Each TLD has its own RA page detailing all RAs signed to date, including all appendices, amendments and renewals. Responsive documentation related to.COM, .NET, .ORG, .BIZ, .INFO, .NAME, .PRO, .MUSEUM, .AERO, .COOP can be located on the publicly available RA pages listed below:

- COM Registry Agreements;
- NET Registry Agreements;
- ORG Registry Agreements;
- .BIZ Registry Agreements;
- .INFO Registry Agreements;
- NAME Registry Agreements;
- PRO Registry Agreements;
- MUSEUM Registry Agreements;
- .AERO Registry Agreements; and
- .COOP Registry Agreements.

While the RAs included on the individual RA pages are not the executed RA's, the content of these RAs mirror the fully executed RAs with the exception of the relevant signatures, which ICANN org does not post.

Part 1: Item No. 2

Item No. 2 seeks "[a]ll correspondence between ICANN and the registry operators (and their representatives) in relation to the .ORG, .BIZ, and/or .INFO Registry Agreements."

With regard to Part 1 Item No. 2, this request is exceedingly overbroad. The collective history of the .ORG, .BIZ and .INFO Registry Agreements spans more than two decades. As written, Item No. 2 seeks "[a]ll correspondence" between ICANN org and three different registry operators over the last twenty years, which is not a reasonable request. As such, it is subject to the following Nondisclosure Condition:

- Information requests: (i) which are not reasonable; (ii) which are excessive or overly burdensome; (iii) complying with which is not feasible; or (iv) are made with an abusive or vexatious purpose or by a vexatious or querulous individual.

Should the Requestor wish to clarify or narrow the scope of Item No. 2, ICANN org will consider the revised request. However, as currently written, Item No. 2 is so overbroad that ICANN org is not able to provide a further response at this time. In addition, Item No. 2 potentially seeks documents that are subject to the following Nondisclosure Conditions:

- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process

between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications

- Information provided to ICANN by a party that, if disclosed, would or would be likely to materially prejudice the commercial interests, financial interests, and/or competitive position of such party or was provided to ICANN pursuant to a nondisclosure agreement or nondisclosure provision within an agreement.

- Confidential business information and/or internal policies and procedures.

Part 1: Item Nos. 3 through 6
Item No. 3 seeks "[a]ll requests from the registry operators (and their representatives) in relation to the reassignment of the .ORG, .BIZ and/or .INFO Registry Agreements."

Item No. 4 seeks "[a]ll requests from the registry operators (and their representatives) in relation to the renewal of the .ORG, .BIZ and/or .INFO Registry Agreements.

Item No. 5 seeks "[a]ll requests from the registry operators (and their representatives) in relation to the modification of the price caps in the .ORG, .BIZ and/or .INFO Registry Agreements."

Item No. 6 seeks "[a]ll requests from the registry operators (and their representatives) in relation to the removal of the price caps in the .ORG, .BIZ and/or .INFO Registry Agreements."

With respect to Part 1 Item Nos. 3 through 6: Extensive information regarding the history of the .ORG, .BIZ and .INFO Registry Agreements is provided above in the Background section, including numerous links to publicly available information regarding the changes over time to the .ORG, .BIZ and .INFO Registry Agreements and the corresponding public comment periods. In addition, information regarding completed assignments of a registry agreement, if any, are available on the pertinent RA webpage and/or on the RA Assignment webpage.

To the extent the Requestor is asking for "[a]ll requests from the registry operators," Item Nos. 3 through 6 are so overbroad and vague that ICANN org is not able to provide a further response at this time. Should the Requestor wish to clarify or narrow the scope of Item Nos. 3 through 6, ICANN org will consider a revised request.

In addition, Item Nos. 3 through 6 potentially seek documents that are subject to the following Nondisclosure Conditions:

- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process

between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications

- Information provided to ICANN by a party that, if disclosed, would or would be likely to materially prejudice the commercial interests, financial interests, and/or competitive position of such party or was provided to ICANN pursuant to a nondisclosure agreement or nondisclosure provision within an agreement.

- Confidential business information and/or internal policies and procedures.

Part 1: Item Nos. 7 and 8

Item No. 7 seeks "[a]ny document showing the reasons for ICANN to accept to examine requests for such renewal, modification and removal."

Item No. 8 seeks "[a]ny document showing the reasons for ICANN to accept requests for such renewal, modification and removal."

With respect to Part 1 Item Nos. 7 and 8: As currently written, it is unclear what documents are being requested. The use of the terms "to accept to examine," "requests" and "such renewal, modification and removal" is vague and confusing; in fact, it is not clear what TLDs are being referenced. ICANN org has provided extensive information above in the Background section regarding the history, renewals and any modifications to terms within the .BIZ, .INFO and .ORG Registry Agreements, which should address Item Nos. 7 and 8. Should the Requestor wish to clarify or narrow the scope of Item Nos. 7 and 8, ICANN org will consider a revised request.

In addition, Item Nos. 7 and 8 potentially seek documents that are subject to the following Nondisclosure Conditions:

- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications

- Information provided to ICANN by a party that, if disclosed, would or would be likely to materially prejudice the commercial interests, financial interests, and/or competitive position of such party or was provided to ICANN pursuant to a nondisclosure agreement or nondisclosure provision within an agreement.

- Confidential business information and/or internal policies and procedures.

- Information subject to the attorney-client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.

- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.

- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

Part 1: Item No. 9

Item No. 9 seeks "[a]ny document showing that ICANN has considered, and made a reasoned decision, as to the question whether the renewal of the .ORG registry agreement, including the removal of the price cap, is in line with the requirement for the .ORG registry fee charged to accredited registrars to be as low as feasible consistent with the maintenance of good quality service, as this requirement was laid out in the DNSO policy and in the request for proposals for reassignment of the .ORG gTLD, as imposed in 2002, never modified since, and still applicable in 2019."

As stated above, on 2 December 2002, ICANN org entered into an RA with PIR for the operation of .ORG, which was subsequently renewed on 8 December 2006 (the 2006 .ORG RA), on 22 August 2013 (the 2013 .ORG RA) and on 30 June 2019 (the 2019 .ORG RA). During each renewal, ICANN org made available all relevant documents, including redlines outlining the proposed changes to the RA for public comment; and, following each public comment period, ICANN org reviewed and analyzed the comments received and drafted a report of the public comments for Board consideration. As such, documents responsive to this item are listed below:

- 2001 .ORG Registry Agreement
- All document made available on the "Materials on .org Reassignment" page
- .ORG Reassignment: Request for Proposals
- 2002 .ORG Registry Agreement
- Proposed 2006 .ORG RA
- Proposed 2006 .ORG Appendices
- Public comments received in response to the 2006 .ORG RA and Appendices
- Draft Summary of Public Comments on the Proposed .BIZ, .INFO, and .ORG Agreements
- ICANN Board's Request for Information
- PIR's Response to ICANN Board's Request for Information
- Revised Proposed 2006 .ORG RA
- Public comments received in response to the Revised Proposed 2006 .BIZ, .INFO and .ORG RA
- Proposed Renewal of the 2013 .ORG RA

- Redline showing changes to the 2006 .ORG RA
- Proposed Renewal of the 2013 .ORG Appendices
- Redline showing changes from the 2006 ORG RA
- Summary of Changes to the 2013 ORG RA
- Public comments received in response to the Proposed 2013 ORG RA and Appendices
- Proposed Renewal of the 2019 .ORG RA
- Redline showing changes compared to the Base gTLD RA (ORG)
- Proposed Addendum to the 2019 ORG RA
- Public comments received in response to the Proposed 2019 ORG RA and Addendum

To the extent there may be other documentary information responsive to Item No. 9 that has not already been made public, such documents are subject to the following Nondisclosure Conditions:

- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.

- Information subject to the attorney-client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.

Part 1: Item Nos 10 through 15
Item No. 10 seeks "[a]ll exchanges of communication between ICANN and the registry operators discussing such renewal, modification and removal."

Item No. 11 seeks "[a]ll communications between ICANN staff and the ICANN Board in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests."

Item No. 12 seeks "[a]ll communications between ICANN staff and individual ICANN Board members in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests."

Item No. 13 seeks "[a]ll communications between ICANN staff in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests."

Item No. 14 seeks "[a]ll communications between ICANN Board members in relation to the .ORG, .BIZ, and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests."

Item No. 15 seeks "[a]ll communications between ICANN staff or ICANN Board member and any other person or organization other than ICANN staff or ICANN Board members in relation to the .ORG, .BIZ and/or .INFO Registry Agreements, including with regard to said renewal, modification and removal, the reasons to accept to examine said requests and the reasons to accept said requests."

With respect to Part 1 Item Nos. 10 through 15: The requests as currently written are overbroad and vague, and it is unclear what documents and/or group of documents are being requested. The .ORG, .BIZ, and .INFO RAs went through several rounds of amendments and renewals dating back to 1999 for .ORG and 2001 for .BIZ and .INFO. As written, Item Nos. 10 through 15 seek "[a]ll communications" over the last twenty years with various registry operators and/or with various iterations of the ICANN Board and staff, which is not a reasonable request. As such, Item Nos. 10 through 15 are subject to the following Nondisclosure Condition:

- Information requests: (i) which are not reasonable; (ii) which are excessive or overly burdensome; (iii) complying with which is not feasible; or (iv) are made with an abusive or vexatious purpose or by a vexatious or querulous individual.

Should the Requestor wish to clarify or narrow the scope of Item Nos. 10 through 15, ICANN org will consider a revised request. However, given the vague references to "such" or "said" "renewal, modification and removal" and reasons "to accept to examine," ICANN org is not able to provide a further response at this time. In addition, Item Nos. 10 through 15 potentially seek documents that are subject to the following Nondisclosure Conditions:

- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications

- Information provided to ICANN by a party that, if disclosed, would or would be likely to materially prejudice the commercial interests, financial interests, and/or competitive position of such party or was provided to ICANN pursuant to a nondisclosure agreement or nondisclosure provision within an agreement.

- Confidential business information and/or internal policies and procedures.

- Information subject to the attorney-client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.

- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.

- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

Part 1: Item No. 16

Item No. 16 seeks "[a]ll documents related to the preparation of the Report of Public Comments for Proposed Renewal of .ORG, .BIZ and/or .INFO Registry Agreements, including summaries and analysis, including the documents exchanged between ICANN staff and ICANN Board, between ICANN Board members, and between ICANN staff or ICANN Board members and any other person or organization other than ICANN staff or ICANN Board members."

Responsive documents related to the preparation of the Report of Public Comments for Proposed Renewal of the 2006 .ORG, .BIZ and/or .INFO Registry Agreements are listed below:

- Proposed 2006 .BIZ RA
- Proposed 2006 .BIZ Appendices
- Public comments received in response to the 2006 .BIZ RA and Appendices
- Proposed 2006 .INFO RA
- Proposed 2006 .INFO Appendices
- Public comments received in response to the 2006 .INFO RA and Appendices
- Proposed 2006 .ORG RA
- Proposed 2006 .ORG Appendices
- Public comments received in response to the 2006 .ORG RA and Appendices
- Draft Summary of Public Comments on the Proposed .BIZ, .INFO, and .ORG Agreements
- ICANN Board's Request for Information
- Afilias' Response to ICANN Board's Request for Information
- PIR's Response to ICANN Board's Request for Information
- Neulevel's Response to ICANN Board's Request for Information
- Revised Proposed 2006 .BIZ RA
- Revised Proposed 2006 .INFO RA
- Revised Proposed 2006 .ORG RA
- Public comments received in response to the Revised Proposed 2006 .BIZ, .INFO and .ORG RA

Responsive documents related to the preparation of the Report of Public Comments for Proposed Renewal of the 2013 .ORG, .BIZ and/or .INFO Registry Agreements are listed below:

- Proposed Renewal of the 2013 .BIZ RA
- Redline showing changes to the 2006 .BIZ RA
- Proposed Renewal of the 2013 .BIZ Appendices
- Redline showing changes from the 2006 .BIZ RA
- Summary of Changes to the 2013 .BIZ RA
- Public comments received in response to the Proposed 2013 .BIZ RA and Appendices
- Proposed Renewal of the 2013 .INFO RA
- Redline showing changes to the 2006 .INFO RA
- Proposed Renewal of the 2013 .INFO Appendices
- Redline showing changes from the 2006 .INFO RA
- Summary of Changes to the 2013 .INFO RA
- Public comments received in response to the Proposed 2013 .INFO RA and Appendices
- Proposed Renewal of the 2013 .ORG RA
- Redline showing changes to the 2006 .ORG RA
- Proposed Renewal of the 2013 .ORG Appendices
- Redline showing changes from the 2006 .ORG RA
- Summary of Changes to the 2013 .ORG RA
- Public comments received in response to the Proposed 2013 .ORG RA and Appendices

Responsive documents related to the preparation of the Report of Public Comments for Proposed Renewal of the 2019 .ORG, .BIZ and/or .INFO Registry Agreements are listed below:

- Base Generic Top-Level Domain (gTLD) RA
- Proposed Renewal of the 2019 .BIZ RA
- Redline showing changes compared to the Base gTLD RA (BIZ)
- Proposed Addendum to the 2019 .BIZ RA
- Public comments received in response to the Proposed 2019 .BIZ RA and Addendum
- Proposed Renewal of the 2019 .INFO RA
- Redline showing changes compared to the Base gTLD RA (INFO)
- Proposed Addendum to the 2019 .INFO RA
- Public comments received in response to the Proposed 2019 .INFO RA and Addendum
- Proposed Renewal of the 2019 .ORG RA
- Redline showing changes compared to the Base gTLD RA (ORG)
- Proposed Addendum to the 2019 .ORG RA

- Public comments received in response to the Proposed 2019 .ORG RA and Addendum

To the extent there may be other documentary information responsive to Item No. 16 that has not already been made public, such documents are subject to the following Nondisclosure Conditions:

- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.

- Information subject to the attorney-client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.

- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.

- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

Part 1: Item No. 17
Item No. 17 seeks "[a]ny and all authorizations granted by, and communications with, government officials in relation to the delegation, reassignment, renewal, amendments and/or operation of the .ORG, .BIZ and/or .INFO Registry Agreements."

As written, Item No. 17 is vague and overbroad in its request for "any and all" communications with "government officials" in relation to essentially all aspects of the .ORG, .BIZ and .INFO Registry Agreements over the past twenty years. To the extent such communications are publicly available, they would be located on the ICANN Correspondence page. ICANN org will continue to review potentially responsive materials and consult with relevant personnel, as needed, to determine if additional documentary information is appropriate for disclosure under the DIDP. If it is determined that certain additional documentary information is appropriate for public disclosure, ICANN org will supplement this DIDP Response and notify the Requestor of the supplement.

In addition, Item No. 17 potentially seeks documents that are subject to the following Nondisclosure Conditions:

- Information provided by or to a government or international organization, or any form of recitation of such information, in the expectation that the information will be kept confidential and/or would or likely would materially prejudice ICANN's relationship with that party.

- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.

- Information provided to ICANN by a party that, if disclosed, would or would be likely to materially prejudice the commercial interests, financial interests, and/or competitive position of such party or was provided to ICANN pursuant to a nondisclosure agreement or nondisclosure provision within an agreement.

- Information that relates in any way to the security and stability of the Internet, including the operation of the L Root or any changes, modifications, or additions to the root zone.

Part 2

Part 2 of the Request seeks “all documents” “relating to economic studies, impact studies, and other studies ICANN has commissioned, examined and/or performed with respect to competition and/or pricing of”.COM, .NET, .ORG, .BIZ, .INFO, “and with respect to vertical integration between registries and registrars, including but not limited to”: “requests for proposals and expressions of interest”; “selection criteria of the service providers”; “draft reports”; reasons for changes to draft reports; “final studies”; “names and qualifications of the authors and participants”; “documentation on which the studies were based”; “contractual arrangements with the authors” and “price paid by ICANN”; “ICANN’s analysis and/or summary of these studies and of the comments made in response to these studies”; and “[a]ll communications between ICANN and the authors and participants of the studies.”

This request is overbroad and not reasonable. As such, Part 2 of the Request is subject to the following Nondisclosure Condition:

- Information requests: (i) which are not reasonable; (ii) which are excessive or overly burdensome; (iii) complying with which is not feasible; or (iv) are made with an abusive or vexatious purpose or by a vexatious or querulous individual.

Notwithstanding, ICANN org provides the following publicly available documentary information responsive to Part 2 of the Request. ICANN org has a set of Procurement

Guidelines to help ICANN org's management attain best purchasing practices, and to ensure that products and services are purchased with the correct specifications, at the appropriate level of quality, and for appropriate value. In accordance with procurement best practices, in certain circumstances, contracting directly with a vendor or service provider is appropriate for procurement decisions, such as:

- Emergency situations.
- Specialized professional services including, but not limited to, staff, audio-visual experts, lobbyists, advisors to CEO or departmental functions, law firms and economists.
- When small or less significant items are required in which the costs to implement competitive bidding outweigh the potential benefits.
- When there is a natural continuation of previous work carried out by the vendor or service provider, and in which competitive bidding would not improve value to ICANN.
- When there is only one potential provider or when the provider has a measurably superior capacity, expertise and/or knowledge, which might be subjectively determined.
- When the incumbent provider demonstrates a clear historic pattern of charging reasonable prices and providing consistently good quality service.

To the extent that "final studies" are the studies that are publicly posted on icann.org, responsive economic studies, impact studies and other studies ICANN org has commissioned, examined, and/or performed with respect to competition and/or pricing of TLDs and vertical integration between registries and registrars are listed below and further responsive information was provided above in the Background section:

- Preliminary Report of Dennis Carlton Regarding Impact of New gTLDs on Consumer Welfare by Professor Dennis Carlton dated 4 March 2009.
- Preliminary Analysis of Dennis Carlton Regarding Price Caps for New gTLD Internet Registries by Professor Dennis Carlton dated 4 March 2009.
- Report of Dennis Carlton Regarding ICANN's Proposed Mechanism for Introducing New gTLD by Professor Dennis Carlton dated 6 June 2009.
- Comments on Michael Kende's Assessment of Preliminary Reports on Competition and Pricing by Professor Dennis Carlton dated 6 June 2009.
- An Economic Framework for the Analysis of the Expansion of the Generic Top-Level Domain Names by Greg Rosston and Michael Katz dated 16 June 2010.
- Economic Considerations in the Expansion of the Generic Top-Level Domain Names, Phase II by Greg Rosston and Michael Katz dated 3 December 2010.
- Phase I Assessment of the Competitive Effects Associated with the New gTLD Program by Analysis Group dated 28 September 2015.
- Phase II Assessment of the Competitive Effects Associated with the New gTLD Program by Analysis Group dated 11 October 2016.
- Revisiting Vertical Separation of Registries and Registrars by CRA International dated 23 October 2008.

- Issues Report on Vertical Integration Between Registries and Registrars by ICANN org dated 11 December 2009.
- Initial Report on Vertical Integration Between Registrars and Registries by the Vertical Integration PDP Working Group dated 23 July 2010.
- Revised Initial Report on Vertical Integration Between Registrars and Registries by the Vertical Integration PDP Working Group dated 18 August 2010.
- Phase I Interim Report Vertical Integration Final by the Vertical Integration PDP Working Group dated 9 November 2010.

Responsive documentation relating to the names and qualifications of the authors and participants, as well as relevant documents on which the studies were based (Item Nos. 6 and 7) are included in and/or cited within the studies. To the extent there may be other responsive documentary information to Part 2 Item Nos. 6 and 7 of the Request that has not already been made public, such documents are subject to the Nondisclosure Conditions noted below.

Responsive documentation related to comments made in response to these studies and ICANN org's summary/analysis of these comments can be found at the following publicly available links:

- Public Comments received in response to Professor Dennis Carlton's Preliminary Reports on Competition and Pricing
- Summary/Analysis of the comments received in response to Professor Dennis Carlton's Preliminary Reports on Competition and Pricing
- Public Comments received in response to Professor Dennis Carlton's two Final Reports of Competition and Pricing
- Public Comments received in response to Greg Rosston and Michael Katz's study entitled An Economic Framework for the Analysis of the Expansion of the Generic Top-Level Domain Names
- Summary/Analysis of the comments in response to Greg Rosston and Michael Katz's study entitled An Economic Framework for the Analysis of the Expansion of Generic Top-Level Domain Names
- Public Comments received in response to Greg Rosston and Michael Katz's report entitled Economic Considerations in the Expansion of the Generic Top-Level Domain Names, Phase II
- Summary/Analysis of the comments in response to Greg Rosston and Michael Katz's report entitled Economic Considerations in the Expansion of the Generic Top-Level Domain Names, Phase II
- Public comments received in response to Phase I Assessment of the Competitive Effects Associated with the New gTLD Program
- Report of public comments on Phase I Assessment of the Competitive Effects Associated with the New gTLD Program
- Public comments received in response to Phase II Assessment of the Competitive Effects Associated with the New gTLD Program
- Report of public comments on Phase II Assessment of the Competitive Effects Associated with the New gTLD Program

To the extent there are any additional documents responsive to Part 2 of the Request that has not already been made public, such documents are subject to the following Nondisclosure Conditions:

- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.

- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.

- Information subject to the attorney–client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.

- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

- Information provided to ICANN by a party that, if disclosed, would or would be likely to materially prejudice the commercial interests, financial interests, and/or competitive position of such party or was provided to ICANN pursuant to a nondisclosure agreement or nondisclosure provision within an agreement.

- Confidential business information and/or internal policies and procedures.

Part 3

Part 3 of the Request seeks "all documents" "relating to the change of control of [PIR], including but not limited to:" all communications "between ICANN and [PIR]"; "between ICANN staff and the ICANN Board"; "between ICANN staff and individual ICANN Board members"; "between ICANN staff"; and "between ICANN Board members" "in relation to the change of control of [PIR]."

As previously stated, ICANN org makes available incoming and outgoing correspondence on the ICANN Correspondence page as a matter of course unless there is a compelling reason for confidentiality. Extensive information regarding the proposed change of control of PIR, and the relevant responsive communications are provided in the Background section.

Part 3, Item No. 6 seeks "[a]ll communications between ICANN staff or individual ICANN Board members and any other person or organization other than ICANN staff of ICANN Board member." As written, Item No. 6 is vague, overly broad and unintelligible such that ICANN org is not able to provide a response to Item No. 6 at this time. Should the Requestor wish to clarify or narrow the scope of Item No. 6, ICANN org will consider the revised request. In addition, Item No. 6 potentially seeks documents that are subject to the Nondisclosure Conditions set forth below.

To the extent there may be other responsive documentary information to Part 3 of the Request that has not already been made public, such documents are subject to the following Nondisclosure Conditions:

- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.

- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.

- Information provided to ICANN by a party that, if disclosed, would or would be likely to materially prejudice the commercial interests, financial interests, and/or competitive position of such party or was provided to ICANN pursuant to a nondisclosure agreement or nondisclosure provision within an agreement.

- Information subject to the attorney-client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.

- Confidential business information and/or internal policies and procedures.

- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

Notwithstanding the applicable Nondisclosure Conditions identified in this Response to all of the Items requested, ICANN org has considered whether the public interest in disclosure of the information subject to these conditions at this point in time outweighs the harm that may be caused by such disclosure. ICANN org has determined that there

are no current circumstances for which the public interest in disclosing the information outweighs the harm that may be caused by the requested disclosure.

About DIDP

ICANN org's DIDP is limited to requests for documentary information already in existence within ICANN org that is not publicly available. In addition, the DIDP sets forth Defined Conditions of Nondisclosure. To review a copy of the DIDP, please see http://www icann org/en/about/transparency/didp. ICANN org makes every effort to be as responsive as possible to the entirety of your Request. As part of its accountability and transparency commitments, ICANN org continually strives to provide as much information to the community as is reasonable. We hope this information is helpful. If you have any further inquiries, please forward them to didp@icann org.

Petillion

Annex 17

XAVIER BECERRA
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DEPARTMENT OF JUSTICE

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January 23, 2020

Board of Directors
ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-9536
board@icann.org

RE: In the Investigation of the Proposed Sale of PIR to Ethos Capital.
Matter ID: LA2020500139

Dear Gentlepersons:

The Office of the Attorney General has the duty to supervise charitable organizations under California Corporations Code section 5250, and Government Code sections 12580 through 12599.8. The Internet Corporation for Assigned Names and Numbers (ICANN), as a registered nonprofit in California, is subject to regulation by the California Attorney General. It is our understanding that ICANN is in the process of reviewing for approval the proposed transfer of Public Interest Registry (PIR), a Pennsylvania nonprofit corporation, to Ethos Capital, a for-profit corporation.

In order for the Attorney General to analyze the impact to the nonprofit community, including to ICANN, of this proposed transfer, we are requesting that you provide the following documents and respond to the following questions. Due to the urgency of the matter, please provide your response no later than 15 calendar days from the receipt of this correspondence.

If a document to be produced exists in electronic format, you must produce it in native electronic format (i.e., any Outlook e-mail messages must be provided in Outlook .pst and/or server files; Excel spreadsheets should be produced in Excel .xlsx files; and Word documents in Word .doc or .docx files), except for accounting software such as QuickBooks Pro or Peachtree that must be produced in Excel .xlsx files, regardless of whether hard copies exist. If paper printouts of electronic documents contain unique information not present in the electronic format (such as a printed email with handwriting, signatures, marginalia, drawings, annotations, highlighting and redactions), you must produce the paper printout.

1. All Registry Agreements entered into by ICANN and PIR (and/or Internet Society (ISOC)), including any amendments, extensions, or other documents regarding the agreements;

2. Any and all Notices of Indirect Change or Control and Entity Conversion from PIR and/or ISOC to ICANN. This request includes all prior notices, whether these were acted on or not;
3. All correspondence, including emails, between PIR and/or ISOC and ICANN regarding the proposed acquisition of PIR by Ethos Capital;
4. All correspondence, including email correspondence, between ICANN and Ethos Capital regarding the proposed acquisition of PIR by Ethos Capital;
5. PIR's unredacted response to ICANN's request for additional information regarding the acquisition of PIR by Ethos Capital;
6. Describe in detail the authority ICANN has to enter into registration and/or licensing agreements for issuing top level domains;
7. Produce all documents regarding the criteria used by ICANN to enter into a Registry Agreement with PIR;
8. Produce all documents that relate to ICANN's authority to enter into registration and/or licensing agreements for issuing top level domains;
9. All documents which relate or refer to ICANN's authority over top level domains (TLDs);
10. Describe in detail the authority ICANN has to regulate, license, and/oversee the domain name system;
11. Does ICANN manage any of the TLDs? If yes, provide a list of these TLDs.
12. Minutes of the proceedings of corporate members, board of directors, board committees, and any board resolutions regarding PIR and/or ISOC. This request includes any information provided to board members by ICANN;
13. Describe in detail the process that ICANN applies in evaluating the transfer or assignment of Registry Agreements;
14. All documents which refer to the process and criteria that ICANN applies in evaluating transfer or assignment of Registry Agreements;
15. Has ICANN approved the transfer or assignment of any Registry Agreement from a nonprofit entity to a for-profit? If yes, identify the agreement, the date, and the parties to the agreement;
16. Did ICANN ever conduct or review any analysis of the monetary value of the .org Registry Agreement? If yes, provide all documents regarding such analysis;
17. When does ICANN expect to make a determination whether it will approve or deny the request from PIR to assign the Registry Agreement to Ethos Capital?
18. Provide an explanation of ICANN's authority to regulate the registration fees charged for .org domains;
19. Provide a history of the registration fees imposed by ICANN and/or PIR to register .org domains;
20. How are registration fees for the .org domain determined?
21. Who is involved in setting the registration fees for .org domains?
22. If the sale of PIR to Ethos is approved, what role will ICANN have to set or approve registration fees for .org domains?
23. Did ICANN approve a removal of the price cap for registration fees for .org domains?

24. If ICANN approved the removal of the price cap for registration fees for.org domains, provide a detailed explanation how this occurred, including when and who initiated the process to remove the price caps and how it was ultimately approved;
25. All correspondence between ICANN, ISOC, PIR, and/or Ethos Capital regarding the removal of the price cap for registration fees for .org domains;
26. Was the removal of the price cap for registration fees for .org domains requested by PIR and/or ISOC? If yes, provide all documents regarding the request for the removal of the price cap;
27. Identify all individuals at ICANN involved in analyzing and/or making recommendations regarding the removal of the price cap for .org domains;
28. What role does ICANN have in setting registration fees for the .org domains?
29. Who at ICANN is responsible for setting or approving registration fees for TLDs?
30. Who at ICANN is responsible for setting or approving registration fees for .org domains?
31. In addition to PIR, who else has ICANN contracted with to provide registry services for .org domains? Identify the time periods for all agreements and the reason these were terminated;
32. In removing the price cap for .org domains, did ICANN provide any restrictions and/or limitations as to any fee increases to register .org domains?
33. Provide all documents provided to ICANN's Board of Directors regarding removal of the price cap for .org domains;
34. Provide the names and contact information of all of ICANN's members of its Board of Directors, including all non-voting members;
35. Your conflict of interest policy.

Instructions for your response:

1. Indicate the request number each document or information is responsive to.
2. The integrity of this investigation relies on the preservation of the requested documents and information in your possession or control. Hence, ensure the preservation of this information until the final resolution of this investigation.
3. All requests are continuing in nature. Accordingly, supplement your production of documents and information and amend the production if you discover prior submissions are incorrect or incomplete.
4. If you do not understand the request, please ask for a clarification.
5. Upon review, additional documents and information may be requested. Also note that the failure to produce requested records can lead to the suspension or revocation of registration, the issuance of cease and desist orders, and the assessment of penalties. (Government Code sections 12591.1, subdivisions (b)-(c), 12598 subdivision (e)(1); California Code of Regulations, title 11, §§ 314, subdivision (a), 315, 999.9, subdivision (f).)

If you have any questions, please feel free to contact the undersigned.

Sincerely,

SANDRA I. BARRIENTOS
Deputy Attorney General

For XAVIER BECERRA
Attorney General

SIB:

LA2020500139

Petillion

Annex 18

ICANN (Internet Corporation for Assigned Names and Numbers) Receives Letter from California Attorney General Regarding .ORG Change of Control

This page is available in:
English |
العربية (http://www.icann.org/news/announcement-2020-01-30-ar) |
Español (http://www.icann.org/news/announcement-2020-01-30-es) |
Français (http://www.icann.org/news/announcement-2020-01-30-fr) |
Русский (http://www.icann.org/news/announcement-2020-01-30-ru) |
中文 (http://www.icann.org/news/announcement-2020-01-30-zh)

LOS ANGELES – 30 January 2020 – The Internet Corporation for Assigned Names and Numbers (ICANN (Internet Corporation for Assigned Names and Numbers)) today announced that the Office of the Attorney General of the State of California (CA-AGO) has requested information (/en/system/files/correspondence/ca-ago-to-icann-board-23jan20-en.pdf) from ICANN (Internet Corporation for Assigned Names and Numbers) regarding the proposed transfer of Public Interest Registry (PIR) from the Internet Society (ISOC (Internet Society)) to Ethos Capital in order to "analyze the impact to the nonprofit community, including to ICANN (Internet Corporation for Assigned Names and Numbers)".

ICANN (Internet Corporation for Assigned Names and Numbers) received the letter last week, and is fully cooperating with the Attorney General's request for information. ICANN (Internet Corporation for Assigned Names and Numbers) is subject to regulation by the CA-AGO, which is responsible for supervising charitable organizations in California. ICANN (Internet Corporation for Assigned Names and Numbers) is a California public benefit, nonprofit corporation. ICANN (Internet

Corporation for Assigned Names and Numbers) and PIR have agreements in place regarding PIR's operation of the .ORG registry and other registries (PIR Registry Agreements).

This afternoon, after initial discussions with the CA-AGO, ICANN (Internet Corporation for Assigned Names and Numbers) is publicly posting the Attorney General's letter. ICANN (Internet Corporation for Assigned Names and Numbers) also is providing formal notice (/en/system/files/correspondence/jeffrey-to-nevett-30jan20-en.pdf) to PIR, pursuant to the terms of the PIR Registry Agreements, because the CA-AGO has requested that ICANN (Internet Corporation for Assigned Names and Numbers) provide information that PIR designated as confidential.

In addition, the CA-AGO has asked for more time, surpassing the current ICANN (Internet Corporation for Assigned Names and Numbers) deadline to review the proposed change of control of the PIR Registry Agreements that is currently set as 17 February 2020. Accordingly, the letter from ICANN (Internet Corporation for Assigned Names and Numbers) to PIR requests additional time, up to 20 April 2020, to conclude both the CA-AGO and ICANN (Internet Corporation for Assigned Names and Numbers) reviews.

Throughout this inquiry, ICANN (Internet Corporation for Assigned Names and Numbers) will continue to conduct thorough due diligence in its consideration of the proposed change of control and related conversion of PIR from a nonprofit to a for-profit. PIR is currently a Pennsylvania nonprofit corporation. As part of the proposed sale, PIR has proposed to the Pennsylvania Attorney General that it be turned into a for-profit entity.

ICANN (Internet Corporation for Assigned Names and Numbers) remains committed to being as transparent as possible in the processing of PIR's request, as we are demonstrating by the posting of both letters.

About ICANN (Internet Corporation for Assigned Names and Numbers)

ICANN (Internet Corporation for Assigned Names and Numbers)'s mission is to help ensure a stable, secure, and unified global Internet. To reach another person on the Internet, you need to type an address – a name or a number – into your computer or other device. That address must be unique so computers know where to find each other. ICANN (Internet Corporation for Assigned Names and Numbers) helps coordinate and support these unique identifiers across the world. ICANN (Internet Corporation for Assigned Names and Numbers) was formed in 1998 as a not-for-profit public-benefit corporation with a community of participants from all over the world.

More Announcements

ICANN (Internet Corporation for Assigned Names and Numbers) to Hold First-Ever Remote Public Meeting (/news/announcement-2020-02-19-en)

Middle East and Adjoining Countries (MEAC) Strategy 2021-2025 (/news/announcement-2-2020-02-18-en)

Implementation of Consensus (Consensus) Policy for the Protection of Red Cross & Red Crescent Identifiers (/news/announcement-2020-02-18-en)

Name Collision Analysis Project (NCAP) Study 1 (/news/announcement-2-2020-02-13-en)

Petillion

Annex 19

ICANN

Los Angeles Headquarters

12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
USA

+1 310 301 5800

+1 310 823 8649

30 January 2020

VIA EMAIL AND US MAIL

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

Re: PIR – Notice of Indirect Change of Control and Entity Conversion (the "Notice")

Dear Jon,

I am attaching a letter from the California Attorney General, dated 23 January 2020 (the "AG Letter"). The AG Letter states, among other things, that the Attorney General is analyzing "the impact to the nonprofit community, including to ICANN, of this proposed transfer" of PIR to Ethos Capital. ICANN is posting the AG Letter on its website today, along with a copy of this letter.

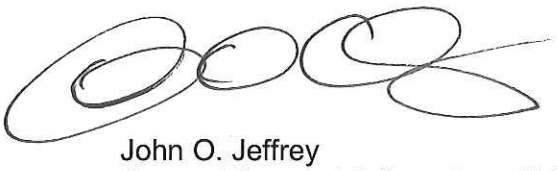
The AG Letter seeks an extensive number of documents and other information from ICANN, including correspondence between PIR and/or ISOC, on the one hand, and ICANN, on the other. The AG Letter also seeks all correspondence between ICANN and Ethos regarding the proposed transaction. Pursuant to Section 7.15 of the .ORG Registry Agreement and the other registry agreements listed in the Notice, each between ICANN and PIR (collectively, the "Registry Agreements"), ICANN is not permitted to disclose any information previously designated as confidential by PIR, unless (among other things) the disclosure is made in response to a valid order of a court of competent jurisdiction or, if in the reasonable opinion of ICANN's legal counsel, such disclosure is otherwise required by applicable law.

The Attorney General has argued, in previous situations, that its letters are the equivalent of a subpoena pursuant to California Government Code Section 12589. Accordingly, pursuant to Section 7.15(c) of the Registry Agreements, ICANN hereby provides PIR with notice of the AG Letter and ICANN's intent to disclose PIR's confidential information pursuant thereto. ICANN intends to begin providing responses (including confidential information of PIR) to the AG Letter at 5:00 p.m. on Thursday, February 6. Please let me know no later than 3 February 2020 whether PIR consents to the disclosure.

In addition, the Attorney General has now requested additional time to review the situation. At present, ICANN has until 17 February 2020 to respond to the request to approve the change of control. ICANN hereby requests that this deadline be extended to 20 April 2020. Know that ICANN is continuing its diligence process (as discussed in the 17 January 2020 letter) and will do so during any extension as well. Please let us know by 3 February 2020 whether you will agree to this request.

Thank you for your cooperation.

Sincerely,



John O. Jeffrey
General Counsel & Secretary, ICANN

cc: Brian Cimbolic, Vice President and General Counsel, PIR

XAVIER BECERRA
Attorney General

State of California
DEPARTMENT OF JUSTICE

300 SOUTH SPRING STREET, SUITE 1702
LOS ANGELES, CA 90013

Public: (213) 269-6000
Telephone: (213) 269-6551
Facsimile: (916) 731-2145
E-Mail: Sandra.Barrientos@doj.ca.gov

January 23, 2020

Board of Directors
ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-9536
board@icann.org

RE: In the Investigation of the Proposed Sale of PIR to Ethos Capital.
Matter ID: LA2020500139

Dear Gentlepersons:

The Office of the Attorney General has the duty to supervise charitable organizations under California Corporations Code section 5250, and Government Code sections 12580 through 12599.8. The Internet Corporation for Assigned Names and Numbers (ICANN), as a registered nonprofit in California, is subject to regulation by the California Attorney General. It is our understanding that ICANN is in the process of reviewing for approval the proposed transfer of Public Interest Registry (PIR), a Pennsylvania nonprofit corporation, to Ethos Capital, a for-profit corporation.

In order for the Attorney General to analyze the impact to the nonprofit community, including to ICANN, of this proposed transfer, we are requesting that you provide the following documents and respond to the following questions. Due to the urgency of the matter, please provide your response no later than 15 calendar days from the receipt of this correspondence.

If a document to be produced exists in electronic format, you must produce it in native electronic format (i.e., any Outlook e-mail messages must be provided in Outlook .pst and/or server files; Excel spreadsheets should be produced in Excel .xlsx files; and Word documents in Word .doc or .docx files), except for accounting software such as QuickBooks Pro or Peachtree that must be produced in Excel .xlsx files, regardless of whether hard copies exist. If paper printouts of electronic documents contain unique information not present in the electronic format (such as a printed email with handwriting, signatures, marginalia, drawings, annotations, highlighting and redactions), you must produce the paper printout.

1. All Registry Agreements entered into by ICANN and PIR (and/or Internet Society (ISOC)), including any amendments, extensions, or other documents regarding the agreements;

2. Any and all Notices of Indirect Change or Control and Entity Conversion from PIR and/or ISOC to ICANN. This request includes all prior notices, whether these were acted on or not;
3. All correspondence, including emails, between PIR and/or ISOC and ICANN regarding the proposed acquisition of PIR by Ethos Capital;
4. All correspondence, including email correspondence, between ICANN and Ethos Capital regarding the proposed acquisition of PIR by Ethos Capital;
5. PIR's unredacted response to ICANN's request for additional information regarding the acquisition of PIR by Ethos Capital;
6. Describe in detail the authority ICANN has to enter into registration and/or licensing agreements for issuing top level domains;
7. Produce all documents regarding the criteria used by ICANN to enter into a Registry Agreement with PIR;
8. Produce all documents that relate to ICANN's authority to enter into registration and/or licensing agreements for issuing top level domains;
9. All documents which relate or refer to ICANN's authority over top level domains (TLDs);
10. Describe in detail the authority ICANN has to regulate, license, and/oversee the domain name system;
11. Does ICANN manage any of the TLDs? If yes, provide a list of these TLDs.
12. Minutes of the proceedings of corporate members, board of directors, board committees, and any board resolutions regarding PIR and/or ISOC. This request includes any information provided to board members by ICANN;
13. Describe in detail the process that ICANN applies in evaluating the transfer or assignment of Registry Agreements;
14. All documents which refer to the process and criteria that ICANN applies in evaluating transfer or assignment of Registry Agreements;
15. Has ICANN approved the transfer or assignment of any Registry Agreement from a nonprofit entity to a for-profit? If yes, identify the agreement, the date, and the parties to the agreement;
16. Did ICANN ever conduct or review any analysis of the monetary value of the .org Registry Agreement? If yes, provide all documents regarding such analysis;
17. When does ICANN expect to make a determination whether it will approve or deny the request from PIR to assign the Registry Agreement to Ethos Capital?
18. Provide an explanation of ICANN's authority to regulate the registration fees charged for .org domains;
19. Provide a history of the registration fees imposed by ICANN and/or PIR to register .org domains;
20. How are registration fees for the .org domain determined?
21. Who is involved in setting the registration fees for .org domains?
22. If the sale of PIR to Ethos is approved, what role will ICANN have to set or approve registration fees for .org domains?
23. Did ICANN approve a removal of the price cap for registration fees for .org domains?

24. If ICANN approved the removal of the price cap for registration fees for.org domains, provide a detailed explanation how this occurred, including when and who initiated the process to remove the price caps and how it was ultimately approved;
25. All correspondence between ICANN, ISOC, PIR, and/or Ethos Capital regarding the removal of the price cap for registration fees for .org domains;
26. Was the removal of the price cap for registration fees for .org domains requested by PIR and/or ISOC? If yes, provide all documents regarding the request for the removal of the price cap;
27. Identify all individuals at ICANN involved in analyzing and/or making recommendations regarding the removal of the price cap for .org domains;
28. What role does ICANN have in setting registration fees for the .org domains?
29. Who at ICANN is responsible for setting or approving registration fees for TLDs?
30. Who at ICANN is responsible for setting or approving registration fees for .org domains?
31. In addition to PIR, who else has ICANN contracted with to provide registry services for .org domains? Identify the time periods for all agreements and the reason these were terminated;
32. In removing the price cap for .org domains, did ICANN provide any restrictions and/or limitations as to any fee increases to register .org domains?
33. Provide all documents provided to ICANN's Board of Directors regarding removal of the price cap for .org domains;
34. Provide the names and contact information of all of ICANN's members of its Board of Directors, including all non-voting members;
35. Your conflict of interest policy.

Instructions for your response:

1. Indicate the request number each document or information is responsive to.
2. The integrity of this investigation relies on the preservation of the requested documents and information in your possession or control. Hence, ensure the preservation of this information until the final resolution of this investigation.
3. All requests are continuing in nature. Accordingly, supplement your production of documents and information and amend the production if you discover prior submissions are incorrect or incomplete.
4. If you do not understand the request, please ask for a clarification.
5. Upon review, additional documents and information may be requested. Also note that the failure to produce requested records can lead to the suspension or revocation of registration, the issuance of cease and desist orders, and the assessment of penalties. (Government Code sections 12591.1, subdivisions (b)-(c), 12598 subdivision (e)(1); California Code of Regulations, title 11, §§ 314, subdivision (a), 315, 999.9, subdivision (f).)

If you have any questions, please feel free to contact the undersigned.

Sincerely,

SANDRA I. BARRIENTOS
Deputy Attorney General

For XAVIER BECERRA
Attorney General

SIB:

LA2020500139

Petillion

Annex 20

3 February 2020

Lauren K. Boglivi
Member of the Firm
d +1.212.969.3082
f 212.969.2900
lboglivi@proskauer.com
www.proskauer.com

BY EMAIL AND US MAIL

John O. Jeffrey
12025 Waterfront Drive
Suite 300
Los Angeles, CA 90094
john.jeffrey@icann.org

Re: Response to ICANN Letter dated 30 January 2020

Dear John,

I represent Public Interest Registry ("PIR") and write in response to your letter dated 30 January 2020, which attaches a letter to ICANN from the Office of the California Attorney General dated 23 January 2020 (the "Attorney General Letter"). You have requested: (1) PIR's consent to the disclosure of information designated as confidential by PIR to the California Attorney General; and (2) another extension of your time to consent or withhold consent to PIR's 14 November 2019 request for approval of an indirect change in control. In the spirit of cooperation and transparency, PIR grants both of your requests as discussed below.

Regarding your request for consent to disclose confidential information on two business days' notice (despite ICANN having the Attorney General Letter for a week before it was sent to PIR), your letter does not cite any authority for the proposition that the Attorney General Letter is the equivalent of a subpoena, nor have you provided PIR with a "reasonable opportunity" to address any such subpoena, as required by Section 7.15(c) of the .ORG Registry Agreement. Nevertheless, in order to facilitate the investigation referenced therein as well as the consent of PIR's request for an indirect change in control, PIR consents to ICANN's disclosure of PIR's confidential information to the Office of the California Attorney General ("OAG").

Regarding your additional requested extension, as a courtesy, PIR will agree to another extension of ICANN's deadline to respond to the request for an indirect change of control until 29 February 2020. An extension to 20 April 2020 is neither necessary nor warranted at this time. As of the date of this letter, ICANN has spent 81 days reviewing the proposed indirect change of control. It is simply unreasonable to protract this process that much further beyond what is prescribed in the registry agreement. Such a precedent would be harmful to the rights of all of ICANN's contracted parties and would introduce uncertainty into what should be a straightforward contractual process. That said, PIR may be amenable to one final brief extension if necessary, provided that significant progress is made toward completion of this process.

PIR would like to remind you that, contrary to your announcement regarding the OAG's inquiry, PIR's conversion from a nonprofit to a for-profit entity is well beyond ICANN's scope of review under the .ORG Registry Agreement. The scope of ICANN's review for an indirect change of

control, as noted by ICANN Chair Maarten Botterman in a series of letters,[1] is "to ensure that the registry remains secure, reliable, and stable." The information PIR already has provided in response to ICANN's requests leaves no doubt as to the continued secure, reliable and stable operation of the .ORG registry following the proposed indirect change in control. It is worth reiterating that the transaction does not involve an assignment of the .ORG Registry Agreement to a new operator, nor does it seek to make any changes to the critical functions of the registry. PIR's current registry service provider and data escrow agent vendor will continue to act in the same capacities. As such, there will be no change to security, reliability, or stability of services of the .ORG registry.

We look forward to continuing to work with you cooperatively through this process. This communication is intended to facilitate good faith discussions, and is without prejudice to or waiver of PIR's claims, rights, remedies and/or defenses, all of which are expressly reserved.

Regards,

Lauren Boglivi

Lauren K. Boglivi, Esq.

cc: Brian Cimbolic, Esq., General Counsel of PIR
Jonathon Nevett, CEO of PIR
Jonathan M. Weiss, Esq., Proskauer Rose, LLP, counsel to PIR
Andrew Ray, Esq. Morgan, Lewis & Bockius, counsel to Internet Society
Todd Boudreau, Esq. Morrison & Foerster LLP, counsel to Ethos Capital

[1] *See* https://www.icann.org/en/system/files/correspondence/botterman-to-perrin-07jan20-en.pdf; https://www.icann.org/en/system/files/correspondence/botterman-to-rattner-07jan20-en.pdf; and https://www.icann.org/en/system/files/correspondence/botterman-to-muscovitch-07jan20-en.pdf.

Petillion

Annex 21

Petillion
Attorneys - Advocaten - Avocats

Flip Petillion
fpetillion@petillion law
Contact Information Redacted

14 February 2020

ICANN
Attn: Board, Ms. Amy Stathos, Mr. John Jeffrey
12025 Waterfront Drive, Suite 3000
Los Angeles, CA 90094-2536, USA

By email: independentreview@icann.org; reconsideration@icann.org; didp@icann.org

Dear Members of the ICANN Board,
Dear Ms. Stathos and Mr. Jeffrey,

Re: DIDP Request No. 20200108-1, Reconsideration Request 20-1, and Cooperative Engagement Process on the renewed Registry Agreements for .org, .info and .biz

We write you this official letter (which we expect you to publish) on behalf of Namecheap, Inc. (Namecheap), urging you to take immediate action in a pressing matter involving the proposed acquisition of Public Interest Registry (PIR) by Ethos Capital. For the reasons expressed in this letter and other submissions by Namecheap, we request that ICANN withhold its approval for this proposed acquisition.

1. Background

On 8 January 2020, Namecheap submitted Reconsideration Request 20-1 and a request for document production (DIDP Request No. 20200108-1). In both requests, Namecheap asked ICANN to provide the necessary openness and transparency with respect to the renewal of

the .ORG Agreement and the actions surrounding the (proposed) acquisition of PIR and ICANN's approval process.

On 8 February 2020, ICANN provided its initial response (ICANN's Response) to Namecheap's DIDP Request. We observe that ICANN is refusing to produce many of the documents requested, even though there are pressing reasons for disclosure. Namecheap objects to the non-disclosure. We will not go into the details here, as Namecheap expects that the production of documents can be discussed and resolved within the framework of Cooperative Engagement Process (CEP) that is currently ongoing with respect to the renewal of the registry agreements for .ORG, .INFO and .BIZ.

ICANN's Response reveals pressing issues that require your immediate attention.

It appears from the background description in ICANN's Response that ICANN had until 17 February 2020 to provide or withhold its consent to PIR's change of control. Until recently, ICANN has not postponed its deadline.

On 23 January 2020, ICANN received a request 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. On 30 January 2020, ICANN sent a letter to PIR informing PIR about the CA-AGO's request for information and documents. ICANN requested that PIR agrees to extend ICANN's deadline to provide or withhold its consent to PIR's proposed change of control. ICANN claims that PIR's counsel responded to the letter on 30 January 2020. ICANN did not provide a copy of this letter. However, ICANN's Response contains a hyperlink to a letter of 3 February 2020 from PIR's counsel. It is unclear whether ICANN has responded to this letter.

It appears from PIR's counsel's letter of 3 February 2020 that PIR agreed to a postponement of ICANN's deadline to 29 February 2020.

However, unless ICANN rejects PIR's request for a change of control, a postponement to 29 February 2020 will not leave sufficient time to address the concerns expressed by Namecheap in the framework of Reconsideration Requests 19-2 and 20-1, the DIDP Request, and the CEP. Unless PIR's request is rejected, ICANN must adequately address Namecheap's concerns before it can continue with the approval process for PIR's request for an indirect change of control. Therefore, any deadlines in this approval process must be suspended *sine die*.

The point is all the stronger in view of the CA-AGO's request. According to an announcement by ICANN on 30 January 2020, the CA-AGO has asked for more time for its investigation. ICANN estimated that it needed up to 20 April 2020 to conclude both the CA-AGO and ICANN reviews. It is not excluded that ICANN may need time beyond 20 April 2020 if the CA-AGO's investigation takes longer than expected by ICANN and/or if ICANN is not fully transparent about its own review in order to allow Namecheap and the Internet community to check ICANN's compliance with its Articles of Incorporation and Bylaws.

Namecheap, and noticeably the Internet community as a whole, are concerned by the CA-AGO's investigation, as the CA-AGO has stated that a failure to cooperate and to produce requested documents to the CA-AGO can lead to "suspension or revocation of registration". The stability of the Internet would be seriously at risk if ICANN were suspended or its registration revoked and ICANN, albeit temporarily, be withheld to perform its mission.

It is our understanding that ICANN would frustrate the CA-AGO's investigation if it is not fully transparent about the change of control approval process or if it approves the change of control before the investigation is terminated.

In addition, any failure to be fully transparent about the change of control approval process or approval of the change of control without addressing the concerns raised by Namecheap will frustrate the pending Reconsideration Request and CEP. Namecheap is engaging in the CEP in a cooperative manner and in good faith. We expect ICANN to do the same. In this respect, we had expected ICANN to communicate openly about the status of the change of control approval process in conversations with Namecheap, without there being a need for Namecheap to discover, via separate processes, the existence of important documents and self-imposed deadlines.

2. Request

In view of the importance of ICANN's mission and of its commitment to carry out its activities through open and transparent processes, Namecheap requests that the documents submitted with the CA-AGO are made publicly available.

Namecheap also requests that all communications with PIR and/or third parties in relation to the CA-AGO's investigation are shared with Namecheap.

Finally, Namecheap urges ICANN to make clear to PIR that its request for an indirect change of control cannot be processed until (i) the CA-AGO has terminated its investigation and has authorized ICANN to proceed with the process for reviewing the proposed change of control, (ii) all challenges with respect to the renewal of the .ORG registry agreement have been appropriately addressed, (iii) Namecheap and the Internet community are given the necessary transparency with respect to the change of control approval process, and (iv) there are no challenges remaining with respect to the change of control approval process or a possible approval of the change of control by ICANN.

If PIR cannot agree to a suspension of its request for approving the change of control, ICANN should make clear to PIR that such approval is reasonably withheld.

We thank you for your immediate attention to this important matter and we look forward to your response, which we expect to receive at the latest on 18 February 2020.

*

This letter is sent without prejudice and reserving all rights.

Yours sincerely,

Flip Petillion

Jan Janssen*

Petillion

Annex 22

Subject: Re: [DIDP] Urgent request re .ORG
Date: Thursday, 20 February 2020 at 19:41:27 Central European Standard Time
From: DIDP
To: Flip Petillion, Jan Janssen
CC: Owen Smigelski
Attachments: image001.png

Dear Messrs. Jassen and Petillion,

This will acknowledge our receipt of your Request for Information ("Request"), which was submitted through the Internet Corporation for Assigned Names and Numbers (ICANN) Documentary Information Disclosure Policy (DIDP) on 14 February 2020. The Request is currently under review and our response along with the original request will be emailed to you on or before 15 March 2020 and be published on the ICANN DIDP page. If you should have any additional questions regarding the ICANN DIDP Response process, please reference the DIDP Response Process Policy page https://www.icann.org/en/system/files/files/didp-response-process-29oct13-en.pdf.

Best regards,

ICANN
12025 Waterfront Dr., Suite 300
Los Angeles, California 90094

From: didp <didp-bounces@icann.org> on behalf of Flip Petillion <fpetillion@petillion.law>
Date: Friday, February 14, 2020 at 10:04 AM
To: Independent Review <independentreview@icann.org>, Reconsideration <reconsideration@icann.org>, "didp@icann.org" <didp@icann.org>
Cc: Owen Smigelski <owen.smigelski@namecheap.com>, Jan Janssen <jjanssen@petillion.law>
Subject: [DIDP] Urgent request re .ORG

Dear Members of the Board,
Dear Amy and John,

Please see the attached.

Best regards,

Flip Petillion
fpetillion@petillion.law
Contact Information Redacted

www.petillion.law

Petillion [petillion.law]

Attorneys – Advocaten – Avocats

Subject: Reconsideration Request 20-1
Date: Thursday, 20 February 2020 at 19:42:01 Central European Standard Time
From: Reconsideration
To: Flip Petillion, Jan Janssen

Dear Messrs. Janssen and Petillion,

This acknowledges our receipt of the letter attached to your 14 February 2020 e-mail. The letter has been posted on the webpage for Reconsideration Request 20-1 and will be provided to the ICANN Board for consideration.

Best regards,

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

Petillion

Annex 23

JONES DAY

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February 13, 2020

VIA EMAIL

Lauren K. Boglivi, Esq.
Proskauer Rose LLP
11 Times Square
New York, NY 10036-8299

Re: Public Interest Registry Request for Change of Control

Dear Ms. Boglivi:

I write in response to your February 3, 2020 letter to John Jeffrey of ICANN.

ICANN very much appreciates PIR's cooperation with ICANN's evaluation of its request for change of control pursuant to Section 7.5 of the ORG Registry Agreement (and other registry agreements pursuant to which PIR has sought a change of control).[1] That section addresses ICANN's review of a proposed "assign[ment]" of rights by PIR, which is defined to include "a direct or indirect change of control of" PIR. ICANN looks forward to completing its review consistent with its obligations under the .ORG Registry Agreement.

ICANN appreciates and accepts your agreement to extend ICANN's deadline to respond to PIR's request for change of control until February 29, 2020. ICANN also strongly urges PIR to grant ICANN a further extension until April 20, 2020, as ICANN previously requested by letter of January 30, 2020. In view of the complexity and importance of this matter, ICANN believes that such a limited further extension is reasonable and appropriate.

I also write in response to a misapprehension reflected in your February 3 letter. The penultimate paragraph of your letter purports to "remind" ICANN that its role in this circumstance is limited to ensuring registry security, reliability, and stability, and, in particular, that consideration of "PIR's conversion from a nonprofit to a for-profit entity" is beyond the permissible scope of ICANN's review. This is wrong. The parties' contracts authorize ICANN to evaluate the reasonableness of the proposed change of control under the totality of circumstances, including the impact on the public interest and the interest of the .ORG

[1] While this letter predominantly focuses on issues related to PIR's request for change of control pursuant to the .ORG Registry Agreement, ICANN also notes that PIR has requested a change of control pursuant to other registry agreements PIR has with ICANN.

community. Nothing in the parties' agreements limit the scope of ICANN's review to the technical criteria you discuss.

Your letter wholly ignores the text of the .ORG Registry Agreement. In fact, as noted above, Section 7.5 provides that PIR may not effectuate "a direct or indirect change of control of" PIR "without the prior written approval of the other party," ICANN. The section specifically addresses the standard governing ICANN's approval or disapproval of such a change of control. The standard is that "approval will not be unreasonably withheld." Subsequent subsections address timing, § 7.5(a), the scope of supplementary information requests, § 7.5(b), the requirement of background checks, § 7.5(c), and other matters unrelated to the approval standard. By its plain terms, this section imposes a standard of overarching reasonableness and does nothing to confine ICANN's consideration to any arbitrary subset of criteria.

While your letter ignores the provisions of the .ORG Registry Agreement, it cites several letters sent by Maarten Botterman, ICANN's Chair of the Board, acknowledging receipt of correspondence relating to the proposed change of control. While these letters are wholly irrelevant to the scope of ICANN's authority under the agreement,[2] far from supporting the limitation on the scope of review that you propose, the letters refute it. You quote Mr. Botterman's commitment "to ensure that the registry remains secure, reliable, and stable." But you fail to observe that a separate paragraph of each of these letters addresses the scope of ICANN's review. In that paragraph, Mr. Botterman makes clear that ICANN "will apply a standard of reasonableness in making its determination," and that this review will encompass "a full understanding of the proposed transaction," taking into account all relevant factors, as opposed to an artificially constrained focus on a few enumerated technical criteria.

The history of the parties' contractual relationship relating to the .ORG domain reinforces the plain language of Section 7.5 in the context of that domain. Among other things, in the process that led to PIR's selection as the operator for the .ORG domain in 2002, ICANN made clear that "[a] key objective" was "differentiati[ng] . . . the .org TLD from TLDs intended for commercial purposes."[3] As such, the .ORG operator was expected to "promot[e] the registry's operation in a manner that is responsive to the needs, concerns, and views of the noncommercial Internet user community."[4] The PIR application thus committed to "institute mechanisms for promoting the registry's operation in a manner that is responsive to the needs, concerns, and

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[2] *See* §§ 7.7 (setting out procedures governing "any revision(s) to this Agreement"), 7.10 (providing that the written agreement "constitutes the entire agreement").

[3] http://archive.icann.org/en/tlds/org/criteria.htm.

[4] *Id.*

views of the non-commercial Internet user community."[5] Accordingly, the parties have long recognized the unique public-interest-focused nature of the .ORG domain, and ICANN's contractual role in evaluating proposed changes of control relating to .ORG effectuates those longstanding principles.

Finally, were there otherwise any doubt about the scope of ICANN's review as an abstract legal matter (and there is no such doubt), the practical realities of the proposed change in control strongly undermine any artificial restriction on the scope of ICANN's analysis. The .ORG domain is exceptionally important, including more than 10 million registered second level domains. In recognition of the obvious importance to the public interest of its operation, the proposed acquirer of PIR has made a variety of public commitments, such as that it will consider "the entire corporate social responsibility and public interest policy and what standards for social, environmental and community performance we aspire to achieve."[6] Having recognized the centrality of the public interest to the propriety of the proposed change of control and directed public commitments to them, the parties cannot reasonably dispute ICANN's role in evaluating these same considerations.

ICANN is reviewing PIR's request for change of control in light of all of the relevant circumstances, and it looks forward to your client's continued cooperation in this process. Please let me know if you would like to discuss these issues.

Very truly yours,

Jeffrey A. LeVee

cc: John O. Jeffrey, Esq.

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[5] https://archive.icann.org/en/tlds/org/applications/isoc/section2.html#c11.4, at § 5.

[6] https://www.keypointsabout.org/blog/strengthening-org-for-the-future.

Petillion

Annex 24

Subject: .org
Date: Monday, 24 February 2020 at 19:44:32 Central European Standard Time
From: Flip Petillion
To: John Jeffrey, Independent Review
CC: Owen Smigelski, Jan Janssen
Attachments: image001.png

Dear Amy and John,

According to a statement on https://www.keypointsabout.org/accountability, PIR has granted ICANN an extension until 20 March 2020 to respond to PIR's request for a change of control. Please confirm by the end of today whether that is correct.

Thank you in advance.

Best regards,

Flip Petillion
fpetillion@petillion.law
Contact Information Redacted

www.petillion.law

Petillion

Attorneys – Advocaten - Avocats