



**Via Email: Correspondence@icann.org
and board@icann.org**
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November 15, 2019

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, California
90094-2536, USA

Attn: Board of Directors

Dear Mesdames and Messieurs:

Re: Withhold Approval for Ethos Transaction and Terminate .Org Registry in Respect of any Consummated Sale Agreement

Shortly after you removed price caps from the .Org Registry Agreement despite widespread opposition from nonprofits and registrants,¹ ISOC announced that it intends to sell the .Org registry to a private equity firm, Ethos Capital,² connected to the former CEO of ICANN and the former Senior Vice President, Development and Public Responsibility Programs, for an undisclosed amount, likely in the billions of dollars.^{3 4 5}

Despite sustained public outcry and compelling arguments to the contrary,^{6 7} you permitted ICANN staff to effectively set the table for the takeover of the cherished home for nonprofits by

¹ See: “.Org price anger comments top 3,000 as non-profits weigh in”, DomainIncite.com, April 29, 2019: <http://domainincite.com/24177-org-price-anger-comments-top-3000-as-non-profits-weigh-in>

² See: <https://www.internetsociety.org/news/press-releases/2019/ethos-capital-to-acquire-public-interest-registry-from-the-internet-society/>

³ See: “The Interesting Connection Between the .Org Deal and ICANN”, DomainNameWire.com, November 13, 2019: <https://domainnamewire.com/2019/11/13/the-interesting-connection-between-the-org-deal-and-icann/>

⁴ Also see: “Selling Off PIR, did ISOC just throw .org Registrants Under a Bus?”: <http://domainincite.com/24976-selling-off-pir-did-isoc-just-throw-org-registrants-under-a-bus>

⁵ Also see: “The Economics of .org Domain Names”, DomainNameWire.com, November 14, 2019: <https://domainnamewire.com/2019/11/14/the-economics-of-org-domain-names/>

⁶ See for example, Letter from ICA to ICANN Board, dated May 17, 2019: <https://www.icann.org/en/system/files/correspondence/muscovitch-to-chalaby-namazi-17may19-en.pdf>

this private equity firm that will be totally unrestrained in raising prices on the nonprofits and other registrants whose online presence is tied to a .org domain name. If the sale proceeds, Ethos Capital will assume control of PIR and will enjoy the sole benefit from PIR's perpetual no-bid contract to operate the .org registry that currently enables PIR to divert a reported at least \$60 million annually in unjustified excess fees from .org registrants,⁸ predominately non-profits with a public mission. Now that ICANN has lifted price caps on .org, Ethos Capital will have the unchecked ability to grow its profits by extracting greater and greater sums from the nonprofit community – forever. As stated by the VP of Public Policy for the National Council of Nonprofits, every dollar in unjustified fees “will ultimately be paid by the people nonprofits will not be able to serve.”⁹

Surely you can now appreciate the terrible blunder that you have made. Crucial policy decisions that have billion-dollar ramifications and which affect the stability of the Internet must be the subject of robust Board involvement and not left to ICANN staff.

If you were led to believe that removing price caps on .Org domain names was a sound approach because the registry would remain in the hands of a nonprofit foundation, you have clearly been misled. If you were led to believe that despite being the effective owner of the .org registry, you were somehow forced to let your service providers tell you how much they can charge, instead of the other way around, you have been led astray. If you have been told that .Org does not have market power within the nonprofit sector, you have been led astray. If you have been told that competition from other gTLDs will constrain .org prices, you have been led astray.

Apparently no one at ICANN is looking out for registrants, but rather are solely focused on selling out registrants and the DNS, piece by piece, regardless of the important public interest served by stable, reasonable pricing for the millions of nonprofits and registrants in the .Org space.

ICANN's poor decision-making and the timing of PIR's sale to a private equity firm raise critical questions that we ask you to answer:

1. Were you aware whether ISOC was in talks to sell the registry when you approved the removal of the price caps?
2. If ISOC was in such talks at that time, why was this material fact not disclosed to you by the registry operator, prior to you approving the renewal agreement?
3. When did you first learn of the negotiations to sell the .Org registry?
4. Did you base your decision to approve the removal of price caps, at least in part, on the expectation or belief that the registry would continue to be operated by a nonprofit

⁷ Also see: Public Comment of ICA, dated April 10, 2019: <https://mm.icann.org/pipermail/comments-org-renewal-18mar19/attachments/20190410/6844d72c/ICACommenton.orgPricing-April102019.pdf>

⁸ See; “The Economics of .org Domain Names”, DomainNameWire.com, November 14, 2019: <https://domainnamewire.com/2019/11/14/the-economics-of-org-domain-names/>

⁹ See: <https://mm.icann.org/pipermail/comments-org-renewal-18mar19/2019q2/000918.html>

organization with a public commitment to maintaining a stable pricing environment, instead of on behalf of a private equity firm whose objective is to maximize profits for its funders?

5. Had you been aware of the planned sale of the .Org registry to a private equity firm, would you have treated the renewal of the .Org registry agreement and the removal of price caps as worthy of robust discussion and a vote by the Board, such that perhaps the terms of the agreement would have been modified?
6. What involvement did your former CEO, Mr. Chehade and your former SVP, Ms. Abusitta-Ouri, have in the decision to employ the base gTLD registry agreement for legacy TLDs during their tenure, if any?
7. What restrictions do you have in place with respect to cooling-off periods for former executives?

**ICANN Should Immediately Exercise its Right to Withhold Approval
of the Sale of the .Org Registry and
Terminate the Registry Agreement in Respect of any Consummated Transaction**

The original justification for awarding the .Org registry contract to ISOC was its public interest focus and commitments.¹⁰ If ISOC is no longer associated with the .Org registry, that justification for awarding the Registry Agreement no longer exists. Therefore, it would be reasonable for you to withhold your approval of the assignment to a private equity company.

ICANN has the contractual right to reasonably withhold approval of the purported sale pursuant to Section 7.5 of the .Org Registry Agreement and to terminate the .org Registry Agreement in the respect of a non-approved consummated transaction, pursuant to Section 7.5(f).¹¹ Putting the contract out for competitive rebid at that point, would at long last put you into compliance with your own Bylaws requiring you to genuinely enable competition¹² and also comply with Department of Justice advice to put registry agreements out for bid,¹³ and thereby ensure the lowest possible prices for nonprofits and registrants. We have already seen that PIR subcontracted Afilias to run the .Org registry for a reported \$18 million per year,¹⁴ thus demonstrating that the true cost of .Org domain names is likely around \$2.00 per year, not the current wholesale cost of close to \$10.00 per year, or the possible future price of \$100.00 per year once a private equity firm takes over and charges whatever it likes.

We urge ICANN to exercise its right pursuant to Section 7.5 to reasonably withhold its approval of the transaction and pursuant to Section 7.5(f), terminate the .org Registry Agreement in respect of any consummated purported assignment. By invoking your right to withhold consent,

¹⁰ See: "How ICANN uses the .Org registry to fund the Internet Society", DomainNameWire.com, April 24, 2019, <https://domainnamewire.com/2019/04/24/how-icann-uses-the-org-registry-to-fund-the-internet-society/>

¹¹ See: .Org Registry Agreement: <https://www.icann.org/sites/default/files/tlds/org/org-agmt-html-30jun19-en.htm>

¹² See: <https://www.icann.org/resources/pages/governance/bylaws-en>

¹³ See: <https://www.icann.org/en/system/files/files/baker-to-dengate-thrush-18dec08-en.pdf>

¹⁴ See: PIR (.Org) slashes registry fee to Afilias in Half to \$18 Million", DomainNameWire.com: <https://domainnamewire.com/2019/10/28/pir-org-slashes-registry-fee-to-afili-as-in-half-to-18-million/>

you will partially mitigate the harm created by the ICANN Board's historic blunder and dereliction of its fiduciary duty in awarding .Org through a perpetual contract lacking any requirement to requalify through a competitive bidding process. If your miscalculation of awarding a perpetual, no-bid agreement - lacking any price caps whatsoever - was premised on the registry remaining in the hands of an organization serving the public interest, the pending sale to a private equity firm should cause you to reconsider your approach. Fortunately the purported sale of the .Org registry affords you an opportunity to withhold approval, terminate the Registry Agreement in respect of any consummated transaction, and put the contract out for competitive bid.

Where is the ICANN Board when it comes to safeguarding the interests of nonprofit registrants?

Sincerely,

INTERNET COMMERCE ASSOCIATION

A handwritten signature in black ink, appearing to read 'Z. Muscovitch', is positioned below the organization's name.

Per:
Zak Muscovitch
General Counsel, ICA

cc: Göran Marby, President and CEO, ICANN
cc: John Jeffrey, General Counsel, ICANN
cc: Cyrus Namazi, Senior VP, GDD, ICANN