
GAC .org Acquisition Discussion

Session # 3 - .org Acquisition Discussion

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Session Objectives

During this session, GAC members will have the opportunity to discuss the proposed PIR acquisition among themselves, share individual viewpoints, react to information shared during the ICANN67 Public Forum 1 held earlier in the day and discuss any further GAC follow-up actions.

Background

On 13 November 2019, the Internet Society (ISOC) and the .org registry domain operator Public Interest Registry (PIR) announced the acquisition of PIR from ISOC by Ethos Capital. Although all the details of the agreement were not initially explained, it was represented that Ethos Capital would acquire PIR and all of its assets from the ISOC and the transaction was expected to close during the first quarter of 2020.

On 14 November 2019, PIR submitted a formal Application for Indirect Change of Control to ICANN (see - <https://www.icann.org/en/system/files/correspondence/cimbolic-to-icann-14nov19-en.pdf>).

On 9 December 2019, ICANN org made a request to PIR for additional information (see <https://www.icann.org/en/system/files/files/pir-isoc-ethos-capital-10jan20-en.pdf> - at Section 2).

On 9 December, the ICANN CEO published a blog post providing an update on the matter and announcing the request for additional information (see - "[.ORG Update](https://www.icann.org/news/blog/org-update)" - <https://www.icann.org/news/blog/org-update>

On 20 December 2019, PIR submitted "confidential responses" to the 9 December ICANN org request for additional information. A revised/redacted version of those responses was announced

by ICANN org on 10 January 2020 (see - <https://www.icann.org/en/system/files/files/pir-isoc-ethos-capital-10jan20-en.pdf>).

Interest by Other Parties

Other organizations

Shortly after the transaction was announced and during the following months, a number of different organizations and individuals communicated their opinions of the proposed acquisition to ICANN. In addition to a letter from the GAC, those parties included the Electronic Frontier Foundation (EFF), the Internet Commerce Association, the Mozilla Foundation, the ICANN Non Commercial Stakeholder Group (NCSG) and others. Links to significant correspondence can be found in the “Further Information” section of this briefing.¹ On 21 February, the EFF and the Americans for Financial Reform Education Fund asked the U.S. Federal Trade Commission to closely scrutinize the proposed transaction (see - <https://www.eff.org/document/eff-afref-letter-ftc-about-sale-pir>).

U.S. Congress

On 23 December, several members of the U.S. Congress sought information about the proposed transaction from ISOC and raised questions over potential harms that the sale of .org could have on nonprofit groups, free speech, and Internet users. ISOC, PIR, and Ethos replied to those questions on 6 January 2020 (see - https://static1.squarespace.com/static/5dd7f6113c431419c139b89d/t/5e14dbe2e375184c7b0a12a6/1578425314581/ISOC_PIR_Ethos_Letter_Response_06Jan2020.pdf). Congress members also reached out to ICANN on 16 January asserting that, “We urge you to reject this private equity takeover of the .ORG registry” (see - <https://www.icann.org/en/system/files/correspondence/warren-et-al-to-marby-et-al-16jan20-en.pdf>).

California Attorney General

On 23 January, the Office of the Attorney General of the State of California (CA-AGO) requested information from ICANN regarding the proposed transaction in order to "analyze the impact to the nonprofit community, including to ICANN." ICANN announced receipt of that request in a blog post on 30 January (see - <https://www.icann.org/news/announcement-2020-01-30-en>). Subsequently the organization corresponded with the CA-AGO and followed up with PIR and ISOC for additional information to address questions presented by the CA-AGO.

Extensions of time

Section 7.5 of the .org registry agreement (and each of the other registry agreements between PIR and ICANN) contemplates that ICANN will respond to requests such as the PIR Application for Indirect Change of Control within 30 days of receiving the request. So far, ICANN and PIR have agreed to a number of extensions of that calendar time period to exchange further information

¹ Individual letters can be found on the ICANN Correspondence web page at <https://www.icann.org/resources/pages/correspondence>.

about the transaction. Links to that correspondence can be found in the “Further Information” section of this briefing.

GAC Positions

The November PIR/ISOC/Ethos announcement prompted substantial community interest, and GAC members returned from the IGF Berlin meeting (25-29 November) reporting that the announcement was a hot-topic at that event.

Subsequently, the GAC leadership discussed the potential for production of a GAC reaction to the announcement proposing that a possible GAC communication regarding the topic to ICANN could reference “concerns of the community”, request “fact-based information from ICANN’s point of view” (delegation of the registry) and ask ICANN what steps (if any) were being taken by ICANN to safeguard the global public interest

A communication expressing those points generally was sent by the GAC Chair to the ICANN Board Chair and CEO on 7 January 2020. In that letter, the GAC stated, *inter alia*:

“Specifically, the GAC wishes to underscore its interest in being kept informed about what steps are being, will be or could be considered by ICANN org to safeguard the global public interest regarding the PIR transaction.

The GAC would also be interested in what process or mechanism exists or could be established to allow any concerned members of the ICANN community to appropriately express their views regarding the transaction.”

On 7 February, the GAC representative from France transmitted a letter to the ICANN CEO asking him to:

1. Send us your detailed opinion on the proposed transaction and any alternatives that may be considered, and
2. Give the GAC the opportunity, before giving your approval, to study the sale more precisely and to make potential recommendations, particularly during ICANN67.

On 14 February, the ICANN Board Chair responded to the GAC Chair letter of 7 January, noting several recent ICANN Announcements regarding the PIR transaction to date and also stating:

“Your letter conveys the GAC’s interest in a process or mechanism that allows the ICANN community to express their views or concerns about the transaction. The ICANN Board and ICANN org appreciate the correspondence received to date and are grateful for the community input. We encourage those interested to also communicate their views or questions about the registry operations and/or policies directly to ISOC, PIR, and/or Ethos Capital.

In parallel with the California Attorney General’s inquiry (referenced above), ICANN will

continue to conduct thorough due diligence in its consideration of the proposed change of control and provide relevant updates to the community. Thank you for the GAC's interest in this topic."

ICANN67 Agenda

During ICANN67, the Public Forum 1 on Monday 9 March will focus on community input regarding the proposed PIR transaction with the entire 90-minute session devoted to that topic.

The GAC plenary session #3, also on Monday, will enable GAC Members to discuss the topic among themselves, share individual viewpoints, react to information shared during the Public Forum 1 and discuss any further necessary GAC actions.

Key Documents

- 14 November - formal Public Interest Registry Application for Indirect Change of Control - <https://www.icann.org/en/system/files/correspondence/cimboic-to-icann-14nov19-en.pdf>
- 9 December 2019 ICANN org Letter to ISOC and Ethos Capital seeking Additional Information, "*Transparency*" - <https://www.icann.org/en/system/files/correspondence/jeffrey-to-sullivan-nevett-09dec19-en.pdf>
- GAC Letter to ICANN Board Chair and CEO - 7 January 2020 - <https://gac.icann.org/sessions/initial-universal-acceptance-and-idn-working-group-call>)
- 14 February - Reply to GAC Letter from Maarten Botterman (ICANN) - <https://www.icann.org/en/system/files/correspondence/botterman-to-ismail-14feb20-en.pdf>

Further Information

ICANN Announcements and Significant Correspondence:

- 9 December ICANN CEO Blog Post, "*.ORG Update*" - <https://www.icann.org/news/blog/org-update>
- 11 January ICANN org Announcement of PIR response to ICANN Request for Additional Information, "*Update on Proposed Acquisition of Public Interest Registry (PIR) by Ethos Capital*" - <https://www.icann.org/news/announcement-2020-01-11-en>

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- 23 January - Letter from Attorney General, State of California to ICANN Board - "*In the Investigation of the Proposed Sale of PIR to Ethos Capital Matter ID: LA2020500139*" - <https://www.icann.org/en/system/files/correspondence/ca-ago-to-icann-board-23jan20-en.pdf>
 - 29 January - Email Correspondence from Jones Day (ICANN) to Attorney General, State of California -

<https://www.icann.org/en/system/files/correspondence/rabkin-to-barrientos-29jan20-en.pdf>

- 30 January - Letter from John Jeffrey to Jonathan Nevett re Letter to ICANN from California Attorney General -
<https://www.icann.org/en/system/files/correspondence/jeffrey-to-nevett-30jan20-en.pdf>
- 30 January - ICANN Blog - *ICANN Receives Letter from California Attorney General Regarding .ORG Change of Control* - <https://www.icann.org/news/announcement-2020-01-30-en>
- 31 January - Letter from Jones Day (ICANN) to Attorney General, State of California -
<https://www.icann.org/en/system/files/correspondence/rabkin-to-barrientos-31jan20-en.pdf>
- 19 February - Letter from John Jeffrey (ICANN) to Jonathan Nevett (PIR) regarding additional requests and or questions prompted by ICANN and California Attorney General -
<https://www.icann.org/en/system/files/correspondence/jeffrey-to-nevett-19feb20-en.pdf>

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- 3 February - Letter from PIR Attorney to ICANN General Counsel -
<https://www.icann.org/en/system/files/correspondence/boglivi-to-jeffrey-03feb20-en.pdf>
 - 13 February - Letter from Jones Day (ICANN) to PIR Attorney -
<https://www.icann.org/en/system/files/correspondence/levee-to-boglivi-13feb20-en.pdf>

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- 13 February - Letter from Maarten Botterman (ICANN) to Gonzalo Camarillo (ISOC) regarding additional information requests of ISOC regarding 2002 .org commitments, etc. -
<https://www.icann.org/en/system/files/correspondence/botterman-to-camarillo-13feb20-en.pdf>
 - 24 February - Letter from Gonzalo Camarillo (ISOC) to Maarten Botterman (ICANN) replying to “2002 Commitments” questions -
<https://www.icann.org/en/system/files/correspondence/camarillo-to-botterman-24feb20-en.pdf>

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- 17 January - Letter from Cyrus Namazi (ICANN GDD) to Jonathan Nevett (PIR) - 30-day calendar response time extended to 17 February 2020 -
<https://www.icann.org/en/system/files/correspondence/namazi-to-nevett-17jan20-en.pdf>
 - 14 February - Letter from John Jeffrey (ICANN) to Jonathan Nevett (PIR) - 30-day calendar response time extended to 29 February 2020 -
<https://www.icann.org/en/system/files/correspondence/jeffrey-to-nevett-14feb20-en.pdf>
 - 21 February - Letter from John Jeffrey (ICANN) to Jonathan Nevett (PIR) - 30-day calendar response time extended to 20 March 2020 -
<https://www.icann.org/en/system/files/correspondence/jeffrey-to-nevett-21feb20-en.pdf>

Internet Society/PIR Announcements:

- Internet Society 13 November 2019 Press Release, “*Ethos Capital to Acquire Public Interest Registry from the Internet Society*” - <https://www.internetsociety.org/news/press-releases/2019/ethos-capital-to-acquire-public-interest-registry-from-the-internet-society/>
- Transcript - PIR Community Forum - 29 November 2019 - https://isoc.live/pir/PIR_Community_Forum.pdf
- *The Sale of PIR: The Internet Society Board Perspective*, Gonzalo Camarillo, Chair ISOC Board of Trustees, 3 December 2019 - <https://www.internetsociety.org/blog/2019/12/the-sale-of-pir-the-internet-society-board-perspective/>

ICANN Correspondence From and To Other Interested Parties:

- 15 November - Letter from Zak Muscovitch (ICA) to ICANN Board - “Withhold Approval for Ethos Transaction and Terminate .Org Registry in Respect of any Consummated Sale Agreement” - <https://www.icann.org/en/system/files/correspondence/muscovitch-to-icann-board-15nov19-en.pdf>
- 7 January - Reply to Zak Muscovitch (ICA) from Maarten Botterman (ICANN) - “Withhold Approval for Ethos Transaction and Terminate .Org Registry in Respect of any Consummated Sale Agreement” - <https://www.icann.org/en/system/files/correspondence/botterman-to-muscovitch-07jan20-en.pdf>
- 8 January - Response to 7 January ICANN Reply - from Zak Muscovitch (ICA) to Maarten Botterman (ICANN) - <https://www.icann.org/en/system/files/correspondence/muscovitch-to-botterman-08jan20-en.pdf>

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- 30 November - Letter from Sherman Rattner to ICANN Board - “Withhold Approval for Ethos Transaction and Terminate .Org Registry in Respect of any Consummated Sale Agreement” - <https://www.icann.org/en/system/files/correspondence/rattner-to-icann-board-30nov19-en.pdf>
 - 7 January - Reply to Sherman Rattner from Maarten Botterman (ICANN) - <https://www.icann.org/en/system/files/correspondence/botterman-to-rattner-07jan20-en.pdf>

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- 9 December - Letter from NCSG to Maarten Botterman (ICANN) - Impact of the ORG Sale on Noncommercial Registrants - <https://www.icann.org/en/system/files/correspondence/ncsg-to-botterman-09dec19-en.pdf>

- Reply to Stephanie Perrin (NCSG) from Maarten Botterman - Impact of the ORG Sale on Noncommercial Registrants -
<https://www.icann.org/en/system/files/correspondence/botterman-to-perrin-07jan20-en.pdf>
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- 17 December - Letter from EFF to ICANN - Change in Control of the .ORG Registry -
<https://www.icann.org/en/system/files/correspondence/cohn-et-al-to-botterman-et-al-17dec19-en.pdf>
 - 7 January - Reply to EFF from Maarten Botterman (ICANN) - Change in Control of the .ORG Registry -
<https://www.icann.org/en/system/files/correspondence/botterman-to-cohn-et-al-07jan20-en.pdf>
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- 3 December - Letter from Mozilla Foundation to Goran Marby (ICANN) -
<https://www.icann.org/en/system/files/correspondence/surman-to-marby-03dec19-en.pdf>
 - 8 January - Reply to Mozilla Foundation from Goran Marby (ICANN) -
<https://www.icann.org/en/system/files/correspondence/marby-to-surman-08jan20-en.pdf>
 - 23 January - Response to Goran Marby Reply - from Mozilla Foundation -
<https://www.icann.org/en/system/files/correspondence/surman-to-marby-et-al-23jan20-en.pdf>
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- 21 January - Letter from Access Now and other NGOs to ISOC and ICANN -
<https://www.icann.org/en/system/files/correspondence/solomon-et-al-to-marby-sullivan-21jan20-en.pdf>
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- 12 December - Letter from Packet Clearing House (PCH) to ICANN -
<https://www.icann.org/en/system/files/correspondence/mitchell-woodcock-to-jeffrey-12dec19-en.pdf>
- 18 December - Letter from Afiliast to ICANN reacting to PCH Letter of 12 December -
<https://www.icann.org/en/system/files/correspondence/mohan-to-jeffrey-18dec19-en.pdf>
- 22 January - Letter from PCH to ICANN -
<https://www.icann.org/en/system/files/correspondence/woodcock-to-icann-board-22jan20-en.pdf>
- 7 February - Letter from Henri Verdier, Ambassador of Digital Affairs (France) to Goran Marby (ICANN) -
<https://www.icann.org/en/system/files/correspondence/verdier-to-marby-07feb20-en.pdf>

Other Resources:

- 6 January ISOC/PIR/ETHOS Response to a 23 December Letter from U.S. Congress - https://static1.squarespace.com/static/5dd7f6113c431419c139b89d/t/5e14dbe2e375184c7b0a12a6/1578425314581/ISOC_PIR_Ethos_Letter_Response_06Jan2020.pdf
- 16 January - Letter from U.S. Congress to ICANN - <https://www.icann.org/en/system/files/correspondence/warren-et-al-to-marby-et-al-16jan20-en.pdf>
- 22 January - ISOC/PIR/ETHOS Letter to ICANN in Reaction to U.S. Congress Letter of 16 January - <https://www.icann.org/en/system/files/correspondence/sullivan-et-al-to-marby-et-al-22jan20-en.pdf>
- Keypointsabout.org website Link - <https://www.keypointsabout.org/>
- Transcript - NTEN Community Call: Internet Society Sale of PIR / .ORG, 5 December 2019 - https://isoc.live/pir/NTEN_Community_Call_Internet_Society_Sale_of_PIR_ORG.pdf

Document Administration

Meeting	ICANN67 Virtual Community Forum, 7-12 March 2020
Title	GAC .org Acquisition Discussion
Distribution	GAC Members (before meeting) and Public (after meeting)
Distribution Date	Version 1: 4 March 2020