

3 February 2020

BY EMAIL AND US MAIL

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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


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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 K. Boglivi, Esq.

cc: Brian Cimboric, 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>.