



NCSG

To: Maarten Botterman, Chair of the Board, ICANN
Cc: Göran Marby, President and CEO, ICANN
From: Noncommercial Stakeholders Group (NCSG)

9 December 2019

RE: Impact of the ORG Sale on Noncommercial Registrants

Dear Mr. Botterman,

We are writing on behalf of the Non-Commercial Stakeholders Group (NCSG) in relation to ISOC's sale agreement of the Public Interest Registry (PIR) to Ethos Capital. As you are no doubt aware, last month the [Internet Society \(ISOC\) announced](#) that Ethos Capital was acquiring all of the assets of PIR, including the ORG TLD.

We are directly affected by this change of ownership. Nonprofits and individual registrants everywhere rely on ORG domain names for their email, websites, campaigns, and fundraising. These domains cannot easily be switched to another provider as years of organizational equity and Internet presence and identity have been built around them.

Our critical requests to the ICANN board are these:

- A.** ICANN has an obligation to enter into negotiations with Ethos Capital to ensure that its operation of the ORG domain conforms to criteria upon which the original award of ORG was contingent (we discuss those criteria below);
- B.** ICANN in turn should make decisions about the future of the ORG TLD only after consulting with impacted registrants and the global non-commercial Internet community (we outline our concerns below); and
- C.** Modifications to the Registry Agreement will be required in order to allay our concerns and mitigate negative impact on registrants.

The continuing obligations of the ORG award

Let us remind ICANN about the following facts regarding the original award of ORG to PIR.

On 20 May 2002, ICANN issued [an RFP](#) for the reassignment of ORG. The criteria for selection were set out [here](#). Among those criteria were:

- 4. Differentiation. Proposals were supposed to “promote and attract registrations from the global noncommercial community.”
- 5. Responsiveness to the needs, concerns, and views of the noncommercial Internet user community. Proposals were supposed to have “specific mechanisms” for achieving this responsiveness and supportiveness.
- 6. High levels of support from ORG registrants. The RFP said that support from “those actually using ORG domain names for noncommercial purposes, will be a factor in the evaluation of the proposals.”

The ORG reassignment was a highly competitive process. Eleven serious proposals were submitted. Underlining the importance of noncommercial community support, ICANN’s CEO at the time, Stuart Lynn, asked the NCSG’s predecessor, known at the time as the Noncommercial Domain Name Holders Constituency of the DNSO, to conduct reviews to rank the many applicants on the basis of how well they complied with these criteria. Our process ranked the ISOC/PIR proposal second in a field of 11. [Link to the evaluation report](#).

Ultimately, the Internet Society’s PIR won the award largely due to its performance on the RFP criteria 4, 5, and 6, as well as the reputation of the Internet Society as an appropriate steward for the domain. And indeed, during its tenure as the ORG delegee, PIR conformed to the many commitments it made to be responsive to the needs of noncommercial registrants. Further, PIR’s status as a nonprofit qualified it for a US\$5 million endowment to defray its operating and startup costs.

However, 16 years later, PIR has proposed re-assigning the award to another organization that has made none of those commitments, and is not a nonprofit. In effect, ISOC is monetizing the tremendous value inherent in an established TLD with millions of registrants without any assurances that the original criteria of the award will continue to be met.

ICANN cannot simply rubber stamp this major change of control.

We are not contesting, per se, ISOC’s desire to secure its financial future and eliminate its dependency on DNS business. We do, however, believe that there was a very explicit *quid pro quo* attached to the original award regarding service to the noncommercial community. *It is ICANN’s duty to ensure that those criteria continue to be met.*

Our Requests for ORG

We are, therefore, demanding that Ethos Capital submit an updated proposal to ICANN, which should be made subject to public comment. The proposal should specify how its operation of the ORG domain will continue to meet the obligations to noncommercial registrants contained in the original RFP.

Due to Ethos Capital's for-profit nature and potentially transient interest in the domain, we are demanding more than verbal promises: we are requesting that the Registry Agreement be modified in ways that will protect existing and future ORG registrants. Specifically, we want to see:

- A revised notification procedure in which wholesale price increases of any amount give ORG registrants 6 months to renew their domains for periods of up to 20 years at the pre-existing annual rate. Implementation of this revised notification procedure must be obligatory to both PIR as well as any registrar through which .org domain names are registered and/or renewed.
- A strong commitment that the administration of the ORG domain will remain content-neutral; that is, the registry will not suspend or take away domains based on their publication of political, cultural, social, ethnic, religious, and personal content, even untrue, offensive, indecent, or unethical material, like that protected under the U.S. First Amendment.
- An elimination of the URS procedure within the ORG domain, as the rights protection mechanisms specific to the URS were appropriate only for new domains.

If Ethos Capital is unwilling or unable to make the commitments described above, the NCSG asks that ICANN exercise its right in article 7.5 of the ORG Registry Agreement and withhold its approval for ISOC to assign its rights and obligations to Ethos Capital.

Our Requests re: NGO and ONG

As new TLDs awarded during the more recent ICANN process, NGO and ONG do not trigger the same continuing obligations as ORG. They were, however, awarded by ICANN as a "community" TLD with specific policies outlined in Specification 12 of [the Registry Agreement](#). According to ICANN's [Registry Transition Process](#), a Registry Transition takes place whenever there is "a change in the contracting party of a gTLD Registry Agreement with ICANN." Further, the transition process states that:

"If the Registry Agreement defines any community that must be consulted at time of transition, ICANN will consult them at this stage. In these cases, there must be support for the proposed successor from the relevant community for the process to continue to transition."

Therefore, ICANN will have to consult with ONG and NGO registrants, to see whether they demonstrate support for the proposed successor.

Request

The ORG situation is unique because of its origins in a competitive RFP that was specifically earmarked for noncommercial registrants. How ICANN handles this case, however, will have enormous precedential consequences for the stability of the DNS and ICANN's own reputation and status. Changes in ownership are likely to be increasingly common going forward. Domain name users want stability and predictability in their basic infrastructure, which means that the obligations, service commitments and pricing cannot be adjusted dramatically as ownership changes. We sincerely urge the ICANN board to step up and meet its clear obligations to ensure that ORG continues to fulfill the conditions of its delegation and that the noncommercial registrants are consulted and protective modifications in the RA are made.