

To: Flip Petition on behalf of Namecheap Inc.

Date: 15 March 2020

Re: Request No. 20200214-1

This is in response to your request for documentary information (Request), which was submitted on 14 February 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 the following documentary information related to a request sent to ICANN org from the Office of the Attorney General of the State of California (CA-AGO) regarding the proposed transfer of Public Interest Registry (PIR) from Internet Society (ISOC) to Ethos Capital.

1. The documents submitted with the CA-AGO.
2. All communications with PIR and/or third parties in relation to the CA-AGO's investigation.

Response

I. Background Information

On 13 November 2019, Public Interest Registry (PIR) and the Internet Society (ISOC) announced the proposed acquisition of Public Interest Registry (PIR) by Ethos Capital. (See <https://www.icann.org/news/blog/org-update>.) Under the [2019 .ORG Registry Agreement \(RA\)](#), PIR must obtain ICANN org'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 org. (See <https://www.icann.org/en/system/files/correspondence/cimboric-to-icann-14nov19-en.pdf>.) Typically, requests to ICANN org for approval of a change of control are confidential. (See <https://www.icann.org/news/blog/org-update>.) In this case, ICANN org asked PIR for permission to publish the notification, but PIR initially declined. (See <https://www.icann.org/en/system/files/correspondence/jeffrey-to-sullivan-nevett-09dec19-en.pdf>.)

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

PIR's 14 November 2019 request for indirect change of control (Change of Control Request); 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 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 Change of Control Request 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>.)

Pursuant to the terms of the [2019 .ORG Registry Agreement](#), ICANN org's original time to consent or withhold consent to the Change of Control Request was 14 December 2019. ICANN org asked PIR for additional time to review the request, and PIR granted ICANN an extension until 17 February 2020. (See <https://www.icann.org/en/system/files/files/icann-to-pir-17jan20-en.pdf>.)

On 23 January 2020, ICANN org received a letter from the Office of the Attorney General of the State of California (CA-AGO) seeking information regarding the proposed change in control of PIR "in order for the [CA-AGO] 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>.) The CA-AGO and ICANN org later agreed that ICANN org would prioritize the production of documents responsive to the CA-AGO's Request Nos. 3-5 and, until further notice, would not produce documents or materials called for in the other requests. (See <https://www.icann.org/en/system/files/correspondence/rabkin-to-barrientos-29jan20-en.pdf>.)

In light of the CA-AGO's investigation, as well as ICANN org's own evaluation of the Change of Control Request, ICANN org sought additional extensions from PIR regarding the deadline to respond to the request. 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 change in control, providing notice to PIR (pursuant to the terms of the 2019 .ORG Registry Agreement) that the CA-AGO had requested certain confidential PIR documents, and requested that PIR agree to extend ICANN org's deadline to respond to PIR's Change of Control Request to 20 April 2020. (See <https://www.icann.org/en/system/files/correspondence/jeffrey-to-nevett-30jan20-en.pdf>.) PIR's counsel responded on [3 February 2020](#), granting an extension until 29 February 2020. On 13 February 2020, ICANN org responded to PIR's 3 February 2020 letter. (See <https://www.icann.org/en/system/files/correspondence/levee-to-boglivi-13feb20-en.pdf>.)

On 14 February 2020, ICANN org and PIR executed a letter agreement confirming the extension of the deadline for ICANN org to provide or withhold consent to PIR's Change of Control Request from 17 February 2020 to 29 February 2020. (See <https://www.icann.org/en/system/files/correspondence/jeffrey-to-nevett-14feb20-en.pdf>.) In the same letter, ICANN org indicated that it would be requesting further information relating to PIR's Change of Control Request. (*Id.*) On 19 February 2020, ICANN org sent a letter to PIR with additional requests and/or questions related to [PIR's response](#) to the initial request. (See <https://www.icann.org/en/system/files/correspondence/jeffrey-to-nevett-19feb20-en.pdf>.) On 21 February 2020, ICANN org and PIR executed another letter agreement confirming a further extension of ICANN org's deadline to respond to PIR's Change of Control Request from 29 February 2020 to 20 March 2020. (See <https://www.icann.org/en/system/files/correspondence/jeffrey-to-nevett-21feb20-en.pdf>.) On 4 March 2020, PIR provided responses to ICANN org's 19 February 2020 additional requests and/or questions related to [PIR's response](#) to the initial request. (See <https://www.icann.org/en/system/files/correspondence/cimboic-to-jeffrey-04mar20-en.pdf>.)

ICANN's responses to the CA-AGO's request for documents and information:

On 31 January 2020, ICANN org provided its initial written response to the CA-AGO's request, providing thirty links to publicly available information responsive to certain of the CA-AGO's requests. (See <https://www.icann.org/en/system/files/correspondence/rabkin-to-barrientos-31jan20-en.pdf>.) Subsequently, ICANN org produced numerous documents and additional links to material responsive to the CA-AGO's Request Nos. 3-5 (pursuant to the agreement between ICANN org and the CA-AGO). The following publicly available links were provided to the CA-AGO, in addition to those provided in ICANN org's 31 January letter:

- <https://www.keypointsabout.org/blog/strengthening-org-for-the-future>
- <https://www.icann.org/en/system/files/correspondence/botterman-to-camarillo-13feb20-en.pdf>
- <https://www.icann.org/en/system/files/correspondence/levee-to-boglivi-13feb20-en.pdf>
- <https://www.keypointsabout.org/accountability>
- <https://finance.yahoo.com/news/ethos-capital-announces-accountability-initiatives-130000230.html>
- <https://www.icann.org/en/system/files/correspondence/jeffrey-to-nevett-19feb20-en.pdf>

- <https://www.icann.org/en/system/files/correspondence/jeffrey-to-nevett-21feb20-en.pdf>
- <https://www.icann.org/en/system/files/correspondence/camarillo-to-botterman-24feb20-en.pdf>

II. Your Request

The DIDP is a mechanism, developed through community consultation, to ensure that information contained in documents concerning ICANN org'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 and conducted a search for responsive documentary information. ICANN org has evaluated the responsive documentary information, 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.

Items No. 1

Item No. 1 seeks “[t]he documents submitted with the CA-AGO.”

In response to the CA-AGO request for information and documents regarding the proposed change in control of PIR, ICANN org has thus far produced over 35 links to publicly available responsive information, which are identified and/or listed above in the Background section.

In addition to the publicly available information provided, ICANN org has produced responsive documents to the CA-AGO that have been designated as “confidential.” ICANN org has evaluated these documents in accordance with the DIDP Response Process and has determined that such documents 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 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.

Items No. 2

Item No. 2 seeks “[a]ll communications with PIR and/or third parties in relation to the CA-AGO’s investigation.”

Responsive communications between ICANN org and PIR and/or third parties in relation to the CA-AGO’s investigation are publicly available on ICANN org’s Correspondence webpage, available at <https://www.icann.org/resources/pages/correspondence>. In addition to the various communications noted in the Background section above, the following publicly available communications are also responsive to Item No. 2 of this request:

- Letter from Maarten Botterman on behalf of ICANN org to Manal Ismail, Chair of Government Advisory Committee (GAC). (See <https://www.icann.org/en/system/files/correspondence/botterman-to-ismail-14feb20-en.pdf>.)
- Letter from Göran Marby of ICANN org to Mark Surman of Mozilla. (See <https://www.icann.org/en/system/files/correspondence/marby-to-surman-07mar20-en.pdf>.)
- Letter from Göran Marby of ICANN org to Jennifer Morgan of Greenpeace International, Kenneth Roth of Human Rights Watch, Sharan Burrow of International Trade Union Confederation, Kumi Naidoo of Amnesty International, May Boeve of 350.org, Patricia Moreira of Transparency International, Brett Solomon of Access Now, Anthony Romero of American Civil Liberties Union (ACLU), Michael Brune of Sierra Club, Marta Tellade of Consumer Reports, and Rashad Robinson of Color Of Change. (See <https://www.icann.org/en/system/files/correspondence/marby-to-solomon-et-al-07mar20-en.pdf>.)
- Letter from Göran Marby of ICANN org to United Nations Human Rights Council. (See <https://www.icann.org/en/system/files/correspondence/marby-to-kaye-voule-07mar20-en.pdf>.)

- Letter from Göran Marby of ICANN org to Bill Woodcock of Packet Clearing House. (See <https://www.icann.org/en/system/files/correspondence/botterman-to-woodcock-08mar20-en.pdf>.)
- Letter from Göran Marby of ICANN org to Zak Muscovitch of Internet Commerce Association. (See <https://www.icann.org/en/system/files/correspondence/botterman-to-muscovitch-08mar20-en.pdf>.)

To the extent there may be other documentary information responsive to Item No. 2 of your Request that has not already been made public, such documents 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 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.

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.