

ICANN67 Public Forum 1: Community Dialogue on the Proposed Transfer of Ownership of the Public Interest Registry

11 March 2020

Responses to Questions posed to ICANN Board during the 9 March 2020 Public Forum¹

	Name/Affiliate	Question	Topic	Response
1	Stephen Ryan	<p>I'd like to ask Mr. Jeffrey to make public the analysis that limits ICANN to solely doing the analysis of whether the registry function contract is the scope of review. For example, Mr. Jeffrey indicates that there's no intention to evaluate whether a change from profit to nonprofit status is implicated in this.</p> <p>I understand that Mr. Jeffrey wants to keep his privilege with regard to his communications to his clients. But the analysis that shows why his scope of review or ICANN's scope of review legally is so limited I think would be very helpful to the community.</p>	Scope of review/ conversion of entity	<p>In his summary, Mr. Jeffrey outlined how the proposed sale of PIR was initiated and structured by ISOC and Ethos Capital and he explained that PIR must then get the consent of ICANN for the Change of Control based on the terms of the Registry Agreement. He also summarized ICANN's review of the proposed <i>Change of Control and Entity Conversion</i> to date and highlighted that ICANN has asked PIR to provide additional information relating to the continuity of the operations of .ORG, the nature of the proposed transaction, how the proposed new ownership structure would continue to adhere to the terms of our current agreement with PIR, how PIR intends to act consistently with its promises to serve the .ORG community with more than 10 million domain registrations. Mr. Jeffrey stressed that ICANN continues to conduct thorough due diligence in its consideration of the proposed change of control and related conversion of PIR from a nonprofit to a for-profit entity. Please also see the letter dated 13 February 2020 from Jeffrey LeVee (ICANN's outside counsel) to Lauren Boglivi (PIR's outside counsel) which is published on the Correspondence page.</p>
2	Suada Hadzovic / ICANN67 Fellow	<p>I was very surprised by the letter from Lauren K. Boglivi to John Jeffrey. But it was said that PIR's conversion from a nonprofit to a for-profit entity is beyond ICANN's scope under the .ORG Registry Agreement.</p>		<p>ICANN cannot answer this question on behalf of PIR.</p>

¹ ICANN org reviewed the transcript and pulled the questions posed by the community during the 9 March 2020 Public Forum in order to facilitate providing answers as quickly as possible.

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		<p>It was written that as a courtesy, PIR will agree to another extension until 29 February. But an extension to 20 April is neither necessary nor granted at this time. And as of the date of that letter, ICANN has spent 81 days. So is this letter some kind of threat of teaching ICANN what ICANN should be or it is something else? I don't know.</p>		
3	Suada Hadzovic	<p>I was also surprised by Gonzalo Camarillo's letter to Maarten Botterman, where it was said that the Internet Society is not selling PIR. So we have that Internet Society has approved PIR converting from a nonprofit corporation to a limited liability company, and with the LLC interest held by Connected Giving Foundation, a nonprofit organization, and then the foundation will then sell its interest in the converted PIR to Ethos. So we should be conveying that this is not a sale.</p> <p>My question is, is it possible to be convinced that this kind of communication, that everything will be all right if .ORG is sold?</p> <p>How important for your decision are letters and concerns by many, especially about UNESCO and U.N. special -- the office of the United Nations commissioner for human rights?</p>	Impact of external communications to ICANN	All letters and comments about this matter are relevant to the consideration by the ICANN Board and org.

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4	Elliot Harmon / Electronic Frontier Foundation	What relevance, if any, does ICANN believe the 2002 criteria for the redelegation of the .ORG domain and ISOC's commitments hold today?	2002 Commitments	ICANN has stated that it is looking at a variety of factors in its review of the proposed Change of Control and Entity Conversion of PIR. The 2002 criteria were based on relevant principles for the .org TLD including the differentiation of the .org TLD from TLDs intended for commercial purposes. These principles remain important today. Please see the letter dated 13 February 2020 from Jeffrey LeVee (ICANN's outside counsel) to Lauren Boglivi (PIR's outside counsel) which is published on the Correspondence page.
5	Bill Woodcock	So we heard John Jeffrey describe a newly constrained view of ICANN's role in this process. I don't believe there's any basis in policy for this diminution of ICANN's role and responsibility. Maarten has already acknowledged that the 2002 criteria are applicable, but that seems to me to pose a contradiction. How can the 2002 criteria still be applicable, yet ICANN no longer have any responsibility for implementing the process by which the 2002 criteria apply, right? How can we have on the one hand the criteria still matter, yet on the other hand, there's nobody in the role to enforce them? That's it.	Scope of review; applicability of 2002 commitments	ICANN org is not aware of a "newly constrained" view of ICANN's role in the process. On the contrary, Mr. Jeffrey summarized a variety of factors that are being reviewed. The 2002 criteria were based on relevant principles for the .org TLD including the differentiation of the .org TLD from TLDs intended for commercial purposes. These principles remain important today. Please see the letter dated 13 February 2020 from Jeffrey LeVee (ICANN's outside counsel) to Lauren Boglivi (PIR's outside counsel) which is published on the Correspondence page.
6	Patrick Woodall / Americans for Financial Reform	PIR has said that the transaction will maintain its financial viability because it generates 50 million in operating revenue, and its annual interest-only loan payments are only about 20 to 25 million.	PIR Finances/Ethos commitments	This question is not directed to ICANN. Please direct this communication to Ethos and/or PIR.

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		<p>Using PIR's generous 50 million income assessment, which is higher than any other prior year, and assuming its promised 10% annual price increases, PIR will still only generate 380 million in revenue over the term of the loan but will owe over 480 million, about 120 million in interest payments and 360 million in principal. How will PIR repay the 360 million principal when it comes due without compromising the stability of PIR or imposing additional costs on its users?</p> <p>Secondly, many private equity firms extract dividend recapture payments after the transaction is completed, forcing the target firm, here PIR, to borrow additional money to repay the private equity firm for its equity stake in the purchase. This additional debt often makes the financial viability of the target firm even more precarious.</p> <p>Will Ethos Capital commit today to not imposing a dividend recapitalization on PIR?</p>		
7	Cara Galiano / Electronic Frontier Foundation	Whether Public Interest commitments in a Registry Agreement can be later revised or revoked through bilateral negotiation between the Registry Operator and ICANN staff as ICANN has stated is the case for other contractual terms.	Ability for PICs to be revoked/ modified	There are two different types of PICs in Specification 11. Those PICs in Sections 1-3 are required by ICANN and we do not view these as subject to negotiation. For the voluntary PICs in Section 4, they are likely subject to modification or revocation through a bilateral amendment (the draft of which would be subject to public comment), but ICANN is not aware of a situation where this has occurred.
8	Amr Elsadr	I was just curious about where the ICANN board and ICANN org stand on the proposed Public	PIR's PICs	ICANN org and Board will continue to evaluate the PICs proposed by PIR. We are hopeful that the PICs formally proposed by PIR will be ones that

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		<p>Interest Commitments that PIR and Ethos came up with. Members of the broader community are also engaging with PIR and Ethos on the same topic.</p> <p>And like Milton said earlier, some of us are very encouraged with what is being proposed. It would be helpful to have an understanding where ICANN is on this and sooner rather later because this helps our own discussions with PIR.</p> <p>If this is going to work, we would like to see if work out in a way that is constructive to the rights of the .org non commercial registrants. And it seems to me that community, PIR, Ethos, and ICANN org and the board need to sort of work together to see that happen. So if you could give us some indication right now and where the current thinking is, I think that would be helpful.</p>		<p>have been vetted with the .ORG community and the ICANN org and Board remain keenly interested in how PIR will represent the views of its community in those PICs or in other suggested changes to its Registry Agreement.</p>
9	Rick Cohen / National Council of Nonprofits	<p>On behalf of the National Council of Nonprofits, the US's largest network of nonprofit organizations, I'm submitting this question.</p> <p>As part of the process of the renewal of the registry contract last year, it seemed that ICANN was indicating an interest in exiting its prior role in price regulation for the registries. The PIC proposed by Ethos would put ICANN right back into the role because ICANN would be the only body empowered to enforce the proposed PIC.</p> <p>Is this a role ICANN is willing to play? And what</p>	ICANN's role in "price regulation" and enforceability of PICs	ICANN is not a price regulator and did not serve in that role in the previous .ORG Registry Agreement. ICANN has, however, had legacy agreements wherein the registry operators agreed to contractual price limitations, and ICANN has and continues to enforce those where they exist.

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		commitments to the .ORG community to uphold the PIC will ICANN make?		
10	Olivier Crepin-Leblond / At Large	<p>I'm speaking on my own behalf.</p> <p>The ALAC is on record for having asked for strong and enforceable public interest commitments in the past -- and "enforceable" here being the keyword -- either through ICANN compliance or through the PIC DRP.</p> <p>Now, ICANN has a specific, narrow, and well-defined remit. And so if a registry operator was to commit in their PICs, let's say, that they would cure the world of the coronavirus, this would, indeed, probably be outside ICANN's remit. So would this be enforceable, if not within ICANN's remit?</p> <p>And the reason why I'm asking this question is because a number of commitments offered by Ethos in the public interest commitments that they have proposed might well be outside ICANN's remit.</p>	PIC enforceability if outside of ICANN remit	The Public Interest Commitment Dispute Resolution Procedure (PICDRP) is an available mechanism through which a dispute over whether a registry operator violated a PIC can be adjudicated. After a potential PIC violation is reported to ICANN, ICANN then determines if it, through its contractual compliance function, will take up an investigation or whether it will refer the reported potential violation to a PICDRP Panel, which is available even where a voluntary PIC involves matters outside of ICANN's remit. If the PICDRP Panel finds a violation of a PIC, then ICANN org determines what remedy is appropriate in light of the the PICDRP Panel's determination.
11	Bjorn Heijlgers/ Rock Stars	<p>I'm representing a company called Rockstars, and I see myself as a concerned global citizen living in the Netherlands. And I've been called forth by this opportunity to share my perspective.</p> <p>Right now the opportunity to shape the organization of actual self-organization in the</p>	Ethical ability of for-profit organization to steward ORG; Ethos Commitment to "intellectual honesty"	These are broad policy-based questions that are not appropriate for ICANN to answer.

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		<p>world is huge. The impact of this single decision of how should the management and organization of organizations online be administrated is one that should not be underestimated in a global context.</p> <p>So the primary question I put forward is: Can a for-profit company ethically and responsibly manage the organization and interest of not-for-profit entities?</p> <p>In doing so, I want to bring a primary challenge to the foreground, and that's the transitioning of the world economy from an unlimited growth model to a sustainable growth model where capitalist-based entrepreneurship and value-based stewardship as demonstrated by many .ORG organizations is in contest.</p> <p>The interoperability of different value systems must be taken into account in order for this transition into a new world economy.</p> <p>So the questions that I have for the ICANN Board -- are met with some desirable answers for Ethos Capital. The primary question for the ICANN Board is: How is Ethos Capital going to honor its value of intellectual honesty in light of the destructive potential of unlimited capitalism?</p>		
12	Kathryn Kleiman	But what I wanted to talk about now -- and you're hearing a course of this, is this conversion of nonprofit to for-profit and the fact	ICANN Board encouragement of engagement	The ICANN Board and org have been consistently and openly urging PIR to seek input from the .ORG community. We understand that PIR currently has its own public comment forum open on its future commitments and the

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		<p>that the nonprofit, The Internet Society, appointed the PIR Board. And over the years, they appointed many, many wonderful, deeply caring individuals, people who truly, truly cared and fostered the environment of the noncommercial community, including people in this virtual room today.</p> <p>The conversion of the nonprofit to the for-profit should concern all of us greatly. What we're seeing is that Ethos is already showing kind of signs of how a for-profit works. We're seeing, as others have commented, one-way communication, backroom dealings, and bilateral discussions but not really that robust transparency in discussion and engagement that we expect in the ICANN community and that we should certainly expect in the .ORG community.</p> <p>I was wondering what more ICANN can do and what more the ICANN Board will do to encourage not just this forum, which we deeply appreciate, but to encourage a more neutral engagement forum to help the discussion between ISOC, PIR, Ethos, and .ORG registrants and .ORG users to better communicate. Right now it's going through a filter straight through frankly Ethos' business interest filter.</p> <p>So what can we do to create a more neutral engagement forum so that what's -- the energy and effort that's being spent around the world by</p>		<p>ICANN Board and org look forward to understanding how PIR then takes those comments into consideration.</p>

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		ICANN registrants and users actually becomes part of the commitments. What can the Board do?		
13	KiKi L'Italien / Tecker International	I wanted to know if the secret group, unnamed and hidden, buying .ORG are the same people trying to buy controlling interest of Twitter.	Shadow investors	This is not a question directed at ICANN.
14	Kieren McCarthy	<p>In his summary of ICANN's legal position in the sale of .ORG this morning, the general counsel made no mention of the registry's public interest role and whether that would be a factor in the board's decision-making.</p> <p>The .ORG registry is operated by a company called Public Interest Registry, and as was noted, ICANN is a public benefit company. Does the lack of any mention of public interest or public benefit in the legal analysis of ICANN's role indicate that it will not be a factor in subsequent decision-making?</p>	ICANN's public interest role in decision making	<p>The ICANN org and Board consider the public interest as part of every decision we take.</p> <p>ICANN has also been explicit that the public interest has a role in the consideration of PIR's request. For example, please see the letter dated 13 February 202 from Jeffrey LeVee (ICANN's outside counsel) to Lauren Boglivi (PIR's outside counsel) which is published on the Correspondence page.</p>
15	John Curran	<p>I'd like to point out three points that were in recent communication from the Address Supporting Organization to ICANN.</p> <p>The five RIRs, the regional Internet registries, as the ASO, did, indeed, ask the ICANN board about the process by which the assignment of the .ORG registry agreement would be considered. While we do not normally engage in policy matters related to DNS, we consider ICANN's handling of the proposal to be an</p>	Process and criteria that ICANN will follow	ICANN has identified relevant information that it is considering in various correspondence, including the questions posed to PIR and ISOC, as well as from ICANN's outside counsel to PIR's outside counsel, all of which are posted on icann.org.

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		<p>important Internet governance decision, with bearing on the community's trust in ICANN and the legitimacy of ICANN's model.</p> <p>The ASO values our relationship with ICANN and views ICANN as a critical component of the global Internet governance ecosystem. Hence, our interest in ICANN's legitimacy and the legitimacy of ICANN's processes.</p> <p>The above points were all in the communication from the ASO to ICANN.</p> <p>Personally, I'd like to observe that many on this call are not asking about the details or merits of the transaction, but, rather, are seeking ICANN to concretely identify the criteria that it will apply in approving the assignment request and the process by which it will evaluate those criteria. This is not in any of the communications from ICANN, and it is not a question for .ORG or PIR or the Ethos team. It is a question for ICANN. To the extent that ICANN can concretely identify the criteria and lay those out and the process by which it will evaluate, I believe it will go a long way to improving the community's understanding of the process we're now following.</p>		
16	Milton Mueller / Internet Governance Project at the	I want to reinforce what John just said in certain respects. We -- I have been unable to understand why ICANN has taken, in this forum, a policy that they can't comment on certain	Process and criteria that ICANN will follow	ICANN has identified relevant information that it is considering in various correspondence, including the questions posed to PIR and ISOC, as well as from ICANN's outside counsel to PIR's outside counsel, all of which are posted on icann.org.

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	Georgia Institute of Technology	things that do not seem to me to be legally sensitive. People are talking about the role of PICs and about the role of, you know, the 2002 RFP. I think ICANN does need to tell us more about how they're going to settle this. You know, what basis will they make a decision? And what criteria will they use?		
17	Katie McInnis / Consumer Reports	Some members of the board have current or past business relationships with contracted parties or other companies in the domain name industry. Does any member of this board stand to gain financially from the sale of PIR and its future operation by Ethos Capital?	Potential conflict of interest	No Board member has identified a financial interest in the sale of PIR to Ethos Capital. See Summary of ICANN's Officers and Directors at: https://www.icann.org/resources/pages/governance/sois-en . Similarly, no member of the ICANN org, through ICANN's internal Conflicts of Interest process, has identified a financial interest in the sale. In addition, in its first request for additional information, ICANN also asked PIR to provide a list of all current directors, officers or employees of ICANN, if any, that are or have been involved in, have advised on or otherwise have an interest in the transaction. PIR responded to that inquiry with "none."
18	Katie McInnis/ Consumer Reports	PIR has proposed voluntary public interest commitments, but they do not contain any substantive guarantees against censorship. Does ICANN consider PIR's proposals sufficient to safeguard the interest of the .ORG registrants?	Sufficiency of PICs to protect ORG registrants	The ICANN Board and org have been consistently and openly urging PIR to seek input from the .ORG community. We understand that PIR currently has its own public comment forum open on its future commitments and the ICANN Board and org look forward to understanding how PIR then takes those comments into consideration.
19	Kathryn Kleiman	I wanted to make a quick statement and then ask the board a question. The quick statement is to laugh at Milton's wonderful term, "original sin." And it's more than	2002 Commitments	ICANN org and Board have consistently evidenced their consideration of how the 2002 commitments might impact the Change of Control request. For example, ICANN's external counsel discussed the 2002 criteria in a letter to PIR, ICANN org asked PIR additional questions relating to the 2002 commitments, and ICANN's Chair of the Board asked the ISOC Board

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		<p>original sin, Milton. It's really that the foundation of the private PIC house is structurally unsound and it's not what we want to build, I don't think, the rights of the .ORG community and .ORG registrants atop, especially since this is kind of the greatest cauldron or cradle ever created of global noncommercial speech. And I say that, having been honored to be the director of .ORG for a period of time.</p> <p>So let me ask the board a question: You have raised, and we thank you for raising, the 2002 commitments that were made when .ORG was passed from a young Verisign to the Internet Society. I should note, Verisign did not have the ability to edit content in its agreements. So the question to the board, if you could please answer it, is what you consider to be the 2002 commitments to be and how you're going to work to see the 2002 commitments that were made on behalf of the .ORG registrants and the .ORG user community, which has now grown to over 10 million, how you're going to work to see them put into this contract.</p> <p>But going back to the original question, what do you see them as? So that we can all know, have a sense of what we're all protecting.</p>		<p>questions about the 2002 criteria. ICANN has long recognized the unique public interest nature of the .ORG domain and the longstanding principles that PIR has upheld in the operation of the .ORG Registry.</p>