

14 February 2020

ICANN

Attn: Board, Ms. Amy Stathos, Mr. John Jeffrey
12025 Waterfront Drive, Suite 3000
Los Angeles, CA 90094-2536, USA

**By email: independentreview@icann.org; reconsideration@icann.org;
 didp@icann.org**

Dear Members of the ICANN Board,
Dear Ms. Stathos and Mr. Jeffrey,

**Re: DIDP Request No. 20200108-1, Reconsideration Request 20-1, and
Cooperative Engagement Process on the renewed Registry Agreements
for .org, .info and .biz**

We write you this official letter (which we expect you to publish) on behalf of Namecheap, Inc. (Namecheap), urging you to take immediate action in a pressing matter involving the proposed acquisition of Public Interest Registry (PIR) by Ethos Capital. For the reasons expressed in this letter and other submissions by Namecheap, we request that ICANN withhold its approval for this proposed acquisition.

1. Background

On 8 January 2020, Namecheap submitted Reconsideration Request 20-1 and a request for document production (DIDP Request No. 20200108-1). In both requests, Namecheap asked ICANN to provide the necessary openness and transparency with respect to the renewal of

the .ORG Agreement and the actions surrounding the (proposed) acquisition of PIR and ICANN's approval process.

On 8 February 2020, ICANN provided its initial response (ICANN's Response) to Namecheap's DIDP Request. We observe that ICANN is refusing to produce many of the documents requested, even though there are pressing reasons for disclosure. Namecheap objects to the non-disclosure. We will not go into the details here, as Namecheap expects that the production of documents can be discussed and resolved within the framework of Cooperative Engagement Process (CEP) that is currently ongoing with respect to the renewal of the registry agreements for .ORG, .INFO and .BIZ.

ICANN's Response reveals pressing issues that require your immediate attention.

It appears from the background description in ICANN's Response that ICANN had until 17 February 2020 to provide or withhold its consent to PIR's change of control. Until recently, ICANN has not postponed its deadline.

On 23 January 2020, ICANN received a request from the Office of the Attorney General of the State of California (CA-AGO) regarding the proposed transfer of PIR from ISOC to Ethos Capital. On 30 January 2020, ICANN sent a letter to PIR informing PIR about the CA-AGO's request for information and documents. ICANN requested that PIR agrees to extend ICANN's deadline to provide or withhold its consent to PIR's proposed change of control. ICANN claims that PIR's counsel responded to the letter on 30 January 2020. ICANN did not provide a copy of this letter. However, ICANN's Response contains a hyperlink to a letter of 3 February 2020 from PIR's counsel. It is unclear whether ICANN has responded to this letter.

It appears from PIR's counsel's letter of 3 February 2020 that PIR agreed to a postponement of ICANN's deadline to 29 February 2020.

However, unless ICANN rejects PIR's request for a change of control, a postponement to 29 February 2020 will not leave sufficient time to address the concerns expressed by Namecheap in the framework of Reconsideration Requests 19-2 and 20-1, the DIDP Request, and the CEP. Unless PIR's request is rejected, ICANN must adequately address Namecheap's concerns before it can continue with the approval process for PIR's request for an indirect change of control. Therefore, any deadlines in this approval process must be suspended *sine die*.

The point is all the stronger in view of the CA-AGO's request. According to an announcement by ICANN on 30 January 2020, the CA-AGO has asked for more time for its investigation. ICANN estimated that it needed up to 20 April 2020 to conclude both the CA-AGO and ICANN reviews. It is not excluded that ICANN may need time beyond 20 April 2020 if the CA-AGO's investigation takes longer than expected by ICANN and/or if ICANN is not fully transparent about its own review in order to allow Namecheap and the Internet community to check ICANN's compliance with its Articles of Incorporation and Bylaws.

Namecheap, and noticeably the Internet community as a whole, are concerned by the CA-AGO's investigation, as the CA-AGO has stated that a failure to cooperate and to produce requested documents to the CA-AGO can lead to "suspension or revocation of registration". The stability of the Internet would be seriously at risk if ICANN were suspended or its registration revoked and ICANN, albeit temporarily, be withheld to perform its mission.

It is our understanding that ICANN would frustrate the CA-AGO's investigation if it is not fully transparent about the change of control approval process or if it approves the change of control before the investigation is terminated.

In addition, any failure to be fully transparent about the change of control approval process or approval of the change of control without addressing the concerns raised by Namecheap will frustrate the pending Reconsideration Request and CEP. Namecheap is engaging in the CEP in a cooperative manner and in good faith. We expect ICANN to do the same. In this respect, we had expected ICANN to communicate openly about the status of the change of control approval process in conversations with Namecheap, without there being a need for Namecheap to discover, via separate processes, the existence of important documents and self-imposed deadlines.

2. Request

In view of the importance of ICANN's mission and of its commitment to carry out its activities through open and transparent processes, Namecheap requests that the documents submitted with the CA-AGO are made publicly available.

Namecheap also requests that all communications with PIR and/or third parties in relation to the CA-AGO's investigation are shared with Namecheap.

Finally, Namecheap urges ICANN to make clear to PIR that its request for an indirect change of control cannot be processed until (i) the CA-AGO has terminated its investigation and has authorized ICANN to proceed with the process for reviewing the proposed change of control, (ii) all challenges with respect to the renewal of the .ORG registry agreement have been appropriately addressed, (iii) Namecheap and the Internet community are given the necessary transparency with respect to the change of control approval process, and (iv) there are no challenges remaining with respect to the change of control approval process or a possible approval of the change of control by ICANN.

If PIR cannot agree to a suspension of its request for approving the change of control, ICANN should make clear to PIR that such approval is reasonably withheld.

We thank you for your immediate attention to this important matter and we look forward to your response, which we expect to receive at the latest on 18 February 2020.

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This letter is sent without prejudice and reserving all rights.

Yours sincerely,


Filip Petillion


Jan Janssen*