

To: Amy Sample Ward, Mitch Stoltz and Jacob Malthouse

Date: 12 January 2020

Re: Request No. 20191213-1

This is in response to your request for documentary information (Request), which was submitted on 13 December 2019 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 the proposed sale of the .ORG registry to the private equity firm Ethos Capital (the "Proposed Transaction"):

1. All correspondences between (i) ICANN org (including but not limited to ICANN Board members and staff) and (ii) Public Interest Registry (PIR), Ethos, and/or Internet Society (ISOC) related to the Proposed Transaction.
2. Without limiting the generality of the foregoing, the particular correspondence referenced in the aforementioned December 9, 2019 letter which indicated that ICANN was sending an additional letter to PIR on the same day wherein ICANN org was making "detailed requests for additional information" regarding the Proposed Transaction ("ICANN's Questions regarding the Proposed Transaction").
3. All responses from ISOC, PIR, and/or Ethos, or any person acting on their behalf, in response to ICANN's Questions regarding the Proposed Transaction, as they exist and as they are received by ICANN org.
4. Any correspondence between (i) any person employed or acting on behalf of Ethos, PIR, and/or ISOC and (ii) any person employed by ICANN or any ICANN Board member that references or mentions, directly or indirectly, the possibility of a sale or other transaction of the .ORG registry, prior to the ICANN receipt of the notice.
5. Any documents – including but not limited to draft and final written agreements, memoranda, reports, analyses, and correspondence between ICANN and/or any person acting on behalf of ICANN that are not currently publicly available and that relate to:
 - a. The terms of the 2002 transfer of .ORG (see <https://www.icann.org/news/announcement-2002-10-14-en.>)

- b. The terms of the renewal/renegotiating of the 2006 .ORG registry agreement (see <https://www.icann.org/news/announcement-3-2006-07-28-en>.)
- c. The removal of Annex W of the 2002 Registry Agreement “Additional Covenants” found here: <https://www.icann.org/resources/unthemed-pages/registry-agmt-appw-2002-10-24-en>.

Response

I. Background Information

On 28 September 1999, ICANN org [announced](#) a tentative agreement with the United States Department of Commerce and Network Solutions, Inc. (NSI) on a series of agreements. (See <https://archive.icann.org/en/nsi/nsi-registry-agreement-04nov99.htm>.) After written and oral [public comments](#), these agreements were [approved](#) by the ICANN Board on 4 November 1999. (*Id.*) One of these agreements was a registry agreement (RA) under which NSI would operate the registries for the .COM, .NET, and .ORG top-level domains (TLDs) according to the requirements stated in the RA and to be developed through the ICANN consensus-based process. (*Id.*)

On 25 May 2001, ICANN org terminated its agreement with NSI and entered into individual RAs with Verisign, Inc. for .COM, .NET and .ORG. (See <https://www.icann.org/resources/unthemed-pages/termination-nsi-agreement-2001-05-25-en>.) On 31 December 2002, the RA with Verisign for .ORG expired. (See <https://www.icann.org/resources/unthemed-pages/registry-agmt-org-2001-05-25-en>.) Beginning in April 2002, ICANN org engaged in a Request for Proposal (RFP) process to identify a successor operator for .ORG. (See <https://archive.icann.org/en/tlds/org/>.) Associated documents regarding the RFP process along with selection and approval of Public Interest Registry (PIR) as the successor operator for .ORG are available at the webpage entitled “[Materials on .org Reassignment](#).” On [2 December 2002](#), ICANN org entered into an RA with PIR for the operation of .ORG, which was subsequently renewed on [8 December 2006](#) (the 2006 .ORG RA), on [22 August 2013](#) (the 2013 .ORG RA) and on [30 June 2019](#) (the 2019 .ORG RA).

On 28 June 2006, ICANN org posted the 2006 .ORG RA, among others, for public comment. (See <https://www.icann.org/news/announcement-2-2006-06-27-en> and <https://www.icann.org/news/announcement-3-2006-07-28-en>.) Following a review of the public comments received, ICANN org prepared a [Draft Summary of Public Comments on the Proposed .BIZ, .INFO, and .ORG Agreements](#) (Draft Summary) for the Board’s review. ICANN org did not receive any comments about the removal of Appendix W. (See <https://forum.icann.org/lists/org-tld-agreement/>.) At the Board’s request, on 11 September 2006, the Draft Summary was posted for further public comment. (See <https://www.icann.org/news/announcement-2-2006-09-11-en>.) Again, ICANN org did not receive any comments about the removal of Appendix W. (See <https://forum.icann.org/lists/org-tld-agreement/>.) On 27 September 2006, the General Counsel and Secretary of ICANN issued a Secretary’s Notice requesting registries to

respond to the issues raised in the public comments. (See <https://www.icann.org/resources/board-material/secretarys-notice-2006-09-27-en>.) On 12 October 2006, ICANN org posted the registries' responses to the public comments. (See <https://www.icann.org/news/announcement-2-2006-10-12-en>.) After having considered the public comments and the responses from the registries, the ICANN Board requested ICANN org to renegotiate the proposed agreements. (See <https://www.icann.org/resources/board-material/minutes-2006-10-18-en>.) On 24 October 2006, ICANN org posted a revised .ORG RA amongst others for public comment. (See <https://www.icann.org/news/announcement-2006-10-24-en>.) Once again, ICANN org did not receive any comments about the removal of Appendix W. (See <https://forum.icann.org/lists/revise-biz-info-org-agreements/>.) Having considered the revised proposed 2006 .ORG RA, the public comments received, and the registry responses to the public comments, the ICANN Board approved the 2006 .ORG RA. (See <https://www.icann.org/resources/board-material/minutes-2006-12-08-en>.) The 2006 .org RA was later amended on 16 July 2008. (See <https://www.icann.org/resources/unthemed-pages/registry-agmt-2008-07-16-en>.)

On 21 June 2013, ICANN org posted for public comment the proposed 2013 .ORG RA. (See <https://www.icann.org/public-comments/org-renewal-2013-06-21-en>.) The public comment period closed on 12 August 2013 and ICANN org received one comment. (See <https://forum.icann.org/lists/comments-org-renewal-21jun13/>.) Following a review of the public comment received, a summary and analysis of the comment was provided to the ICANN Board. (See <https://www.icann.org/en/system/files/files/report-comments-org-renewal-13aug13-en.pdf>.) Based on a review of the summary report, the ICANN Board determined that no revisions to the proposed 2013 .ORG RA were necessary and on 22 August 2013 approved the 2013 .ORG RA. (See <https://www.icann.org/resources/board-material/resolutions-2013-08-22-en#2.c>.)

The 2019 .ORG RA was the result of bilateral negotiations between ICANN org and PIR and is based on the [base generic top level domain \(gTLD\) Registry Agreement](#) updated on 31 July 2017 (Base RA). (See *id.* and <https://www.icann.org/public-comments/org-renewal-2019-03-18-en>.) In an effort to account for the specific nature of .ORG, relevant provisions in the 2013 .ORG RA have also been carried over to the 2019 .ORG RA. (See <https://www.icann.org/public-comments/org-renewal-2019-03-18-en>.) As a result, the 2019 .ORG RA shares similar terms, as well as differences with both the [2013 .ORG Registry Agreement](#) and the Base RA. A summary of the material differences between the 2019 .ORG RA compared with the [2013 .ORG RA](#) and the Base RA are laid out in the [Proposed Renewal of .org Registry Agreement public comment proceeding](#). In January 2019, ICANN org provided a status briefing to the Board about the 2019 .ORG RA negotiations. (See <https://www.icann.org/en/system/files/files/reconsideration-19-3-electronic-frontier-final-determination-12dec19-en.pdf> at pg. 11.) With the Board's support, ICANN org's President and CEO decided to complete the renewal negotiations using the Base RA as the starting point. (*Id.* at pg. 12.) After completing negotiations with PIR, on 18 March 2019, ICANN org posted the proposed 2019 .ORG RA for public comment. (See <https://www.icann.org/news/announcement-2-2019-03-18-en>.) ICANN org received

over 3,200 submissions in response to its call for public comments on the proposed 2019 .ORG RA. (See <https://mm.icann.org/pipermail/comments-org-renewal-18mar19/>.) In June 2019, ICANN org provided briefing papers concerning the public comments to the ICANN Board which “summarized the key issues raised in the public comment process and correspondence... and outlined the rationale for the recommendation to renew the agreements as proposed.” (See <https://www.icann.org/en/system/files/correspondence/namazi-to-muscovitch-26jul19-en.pdf>.) Following consultations with the Board and with the Board’s support, ICANN org executed the 2019 .ORG RA. (See <https://www.icann.org/resources/agreement/org-2019-06-30-en>.)

On 13 November 2019, the proposed acquisition of PIR by Ethos Capital was announced by the parties and the Internet Society (ISOC). (See <https://www.icann.org/news/blog/org-update>.) On 14 November 2019, PIR formally notified ICANN org of the Proposed Transaction. (*Id.*) Under the [2019 .ORG RA](#), PIR must obtain ICANN’s prior approval before any transaction that would result in a change of control of the registry operator. Typically, similar requests to ICANN are confidential. In this case, ICANN org has asked PIR for permission to publish the notification. (*Id.*)

According to the 2019 .ORG RA and ICANN processes for reviewing such requests, ICANN org has 30 days to request additional information about the proposed transaction including information about the party acquiring control, its ultimate parent entity, and whether they meet the ICANN-adopted registry operator criteria (as well as financial resources, and operational and technical capabilities). (*Id.*)

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. (*Id.*) Specifically, ICANN org has asked PIR to provide information related to the continuity of the operations of the .org registry, the nature of the proposed transaction, how the proposed new ownership structure would continue to adhere to the terms of ICANN org’s current agreement with PIR, and how they intend to act consistently with their promises to serve the .org community with more than 10 million domain name registrations. (*Id.*) Separately, on the same date, ICANN org also sent a letter to both ISOC and PIR asking them to: (1) reconsider publishing the 14 November 2019 notification relating to the Proposed Transaction; 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 the 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 the submission (Revised Submission). The Revised Submission can be found at <https://www.icann.org/news/announcement-2020-01-11-en>.)

II. Your Request

The DIDP is a mechanism, developed through community consultation, to ensure that information contained in documents concerning ICANN organization'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 who may have responsive documentary information and is searching for documents that may be responsive to the items requested. ICANN org has evaluated the responsive documentary information found to date, 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.

ICANN org continues to determine if any other documentary information in its possession, custody or control is responsive to your Request, is not already public and is appropriate for publication; if so, ICANN org will supplement this Response.

Items Nos. 1 through 4

Item No. 1 seeks “[a]ll correspondences between (i) ICANN org (including but not limited to ICANN Board members and staff) and (ii) Public Interest Registry (PIR), Ethos, and/or Internet Society (ISOC) related to the Proposed Transaction.”

Item No. 2 seeks “the particular correspondence referenced in the aforementioned December 9, 2019 letter which indicated that ICANN was sending an additional letter to PIR on the same day wherein ICANN org was making ‘detailed requests for additional information’ regarding the Proposed Transaction (‘ICANN’s Questions regarding the Proposed Transaction’).”

Item No. 3 seeks “[a]ll responses from ISOC, PIR, and/or Ethos, or any person acting on their behalf, in response to ICANN’s Questions regarding the Proposed Transaction, as they exist and as they are received by ICANN org.”

Item No. 4 seeks “[a]ny correspondence between (i) any person employed or acting on behalf of Ethos, PIR, and/or ISOC and (ii) any person employed by ICANN or any ICANN Board member that references or mentions, directly or indirectly, the possibility of a sale or other transaction of the .ORG registry, prior to the ICANN receipt of the notice.”

ICANN org makes available incoming and outgoing correspondences on the [ICANN Correspondence page](#) as a matter of course unless there is a compelling reason for confidentiality. The letter dated 9 December 2019 from John Jeffrey, ICANN's General Counsel and Secretary to Andrew Sullivan, President and CEO of ISOC and John Nevett, CEO of PIR is responsive to Item No. 1 of the Request. (See <https://www.icann.org/resources/pages/correspondence> and <https://www.icann.org/en/system/files/correspondence/jeffrey-to-sullivan-nevett-09dec19-en.pdf>.)

PIR's [Revised Submission](#) to ICANN's org's Request for Additional Information received by ICANN org on 10 January 2020 and posted by ICANN org on 11 January 2020 is responsive to Items in your Request.

To the extent there may be other responsive documentary information to the above Items in your Request that have not already been made public, they are subject to the following Nondisclosure Conditions:

- 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.
- Confidential business information and/or internal policies and procedures.

Item No. 5

Item No. 5 seeks “any documents, including but not limited to draft and final written agreements, memoranda, reports, analyses, and correspondence between ICANN and/or any person acting on behalf of ICANN that are not currently publicly available and that relate to:

- a. The terms of the 2002 transfer of .ORG (see <https://www.icann.org/news/announcement-2002-10-14-en>.)
- b. The terms of the renewal/renegotiating of the 2006 .ORG registry agreement (see <https://www.icann.org/news/announcement-3-2006-07-28-en>.)
- c. The removal of Annex W of the 2002 Registry Agreement “Additional Covenants” found here: <https://www.icann.org/resources/unthemed-pages/registry-agmt-appw-2002-10-24-en>.”

As noted above, on 31 December 2002, the RA with Verisign for .ORG expired and beginning in April 2002, ICANN org engaged in a process to identify a successor operator for .ORG. Documents associated the .ORG RFP process, including the selection and approval of Public Interest Registry (PIR) as the successor operator for .ORG are available at the webpage entitled "[Materials on .org Reassignment.](#)"

Also noted above, on 28 June 2006, ICANN org posted the proposed 2006 .ORG RA, among others, for public comment. Following a review of the public comments received, ICANN org prepared a [Draft Summary of Public Comments on the Proposed .BIZ, .INFO, and .ORG Agreements](#) (Draft Summary) for the Board's review. ICANN org did not receive any comments about the removal of appendix W. At the Board's request, on 11 September 2006, the Draft Summary was posted for further public comment. Again, no public comments were received about the removal of appendix W. On 27 September 2006, the General Counsel and Secretary of ICANN issued a Secretary's Notice requesting registries to respond to the issues raised in the public comments. On 12 October 2006, ICANN org posted the registries' responses to the public comments. After having considered the public comments and the responses from the registries, the ICANN Board requested ICANN org to renegotiate the proposed agreements. On 24 October 2006, ICANN org posted a revised .ORG RA amongst others for public comment. Again, ICANN org did not receive any comments about the removal of appendix W. Having considered the revised 2006 .ORG RA, the public comments received in response to the revised 2006 .ORG RA, and the registry responses to the public comments, the ICANN Board approved the 2006 .ORG RA.

ICANN org has not identified any documents within ICANN org's possession, custody, or control that are not already public, that are responsive to Item No. 5, parts a and c of your Request.

With respect to Item No. 5 part b of your Request, ICANN org has determined that any responsive documents are subject to the following Nondisclosure Conditions:

- 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.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

- Information requests: (i) which are not reasonable; (ii) which are excessive or overly burdensome; (iii) complying with which is not feasible; or (iv) are made with an abusive or vexatious purpose or by a vexatious or querulous individual.

Notwithstanding the applicable Nondisclosure Conditions identified in this Response, ICANN org has also 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.