

**Congress of the United States**  
Washington, DC 20510

March 18, 2020

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Dear ICANN Leadership:

On January 16, 2020, we wrote to you about the Internet Society’s (ISOC) proposed sale of the Public Interest Registry (PIR), the operator of the .ORG domain name registry, to the private equity firm Ethos Capital (Ethos).<sup>1</sup> We were concerned that the sale would be contrary to ICANN’s commitment to the public benefit, that it might undermine the reliability of .ORG websites, and that Ethos is unlikely to be a responsible steward of the .ORG registry. New information we have obtained in the last two months, including statements made by ISOC, PIR, and Ethos, has validated these concerns. Accordingly, we write to reiterate our view that ICANN should block the proposed change of control of the .ORG registry.

In our January letter, we wrote that ICANN’s bylaws commit it to acting for the public benefit “in all events,”<sup>2</sup> and that the public interest should be an especially prominent factor in determining who should be approved to operate the .ORG registry.<sup>3</sup> On February 3, 2020, PIR wrote, through their lawyers, to ICANN that the scope of ICANN’s review of the proposed

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<sup>1</sup> Letter from Senators Elizabeth Warren, Ron Wyden, Richard Blumenthal, and Edward J. Markey, and Representatives Anna G. Eshoo and Mark Pocan to ICANN leadership, January 16, 2020, <https://www.warren.senate.gov/imo/media/doc/2020.01.16%20Letter%20to%20ICANN%20about%20sale%20of%200.ORG%20registry.pdf>.

<sup>2</sup> ICANN Bylaws, Section 1.2(a)(iv), <https://www.icann.org/resources/pages/governance/bylaws-en>.

<sup>3</sup> Letter from Senators Elizabeth Warren, Ron Wyden, Richard Blumenthal, and Edward J. Markey, and Representatives Anna G. Eshoo and Mark Pocan to ICANN leadership, January 16, 2020, <https://www.warren.senate.gov/imo/media/doc/2020.01.16%20Letter%20to%20ICANN%20about%20sale%20of%200.ORG%20registry.pdf>.

change of control was limited to ensuring that “the registry remains secure, reliable, and stable.”<sup>4</sup> On February 13, however, ICANN disagreed, writing through their lawyers:

This is wrong. The parties’ contracts authorize ICANN to evaluate the reasonableness of the proposed change of control under the totality of circumstances, including the impact on the public interest and the interest of the .ORG community. Nothing in the parties’ agreements limit the scope of ICANN’s review to the technical criteria you discuss.<sup>5</sup>

We are pleased that ICANN agrees with us that it must consider the public interest and the interests of the .ORG community when reviewing this change of control. Given that Ethos Capital has failed to show how the takeover of the .ORG domain is in the interest of the public or the .ORG community, ICANN must block the change of control.

### **Ethos and PIR Have Not Been Transparent About Who is Behind the Sale**

To facilitate the transfer of ownership and the conversion of PIR from a non-profit to a for-profit, Ethos created a new organization, Purpose Domains Direct, LLC. However, the identities of the directors of this company remain unknown to the public. In the publicly-released version of a document in which PIR describes the transaction to ICANN, the address of the company, the names of the directors, and the signatories to the deal, are all redacted.<sup>6</sup> What’s more, Purpose Domains Direct, LLC, is itself owned by another company, Purpose Domains Holdings, LLC. The owners of that company are not publicly known either.<sup>7</sup>

Additionally, Ethos and PIR have kept the identities of the investors who have provided \$775 million of the \$1.135 billion transaction cost<sup>8</sup>—and will therefore have financial control of Ethos’ new entity that runs the .ORG registry—shrouded in secrecy. On January 21, 2020, Nora Abussita-Ouri, Ethos’ Chief Purpose Officer, gave a radio interview in which she touted Ethos’ transparency around the deal—but then promptly declined to discuss who is responsible for funding it:

Abussita-Ouri: Now to the point that there hasn’t been transparency around the transaction—this is completely incorrect...

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<sup>4</sup> Letter from Lauren K. Boglivi to John O. Jeffrey, February 3, 2020, <https://www.icann.org/en/system/files/correspondence/boglivi-to-jeffrey-03feb20-en.pdf>.

<sup>5</sup> Letter from Jeffrey A. LeVee to Lauren K. Boglivi, February 13, 2020, <https://www.icann.org/en/system/files/correspondence/levee-to-boglivi-13feb20-en.pdf>.

<sup>6</sup> PIR, ISOC, Ethos Capital, and ICANN, “PIR’s Notice of Indirect Change of Control and Entity Conversion submitted to ICANN on 14 November 2019; ICANN’s requests for additional information dated 9 December 2019; PIR’s responses to ICANN’s requests for additional information provided to ICANN on 20 December 2019,” p. 8-9, <https://www.icann.org/en/system/files/files/pir-isoc-ethos-capital-10jan20-en.pdf>.

<sup>7</sup> *Id.*; The Register, “ICANN finally reveals who’s behind purchase of .org: It’s ██████████ and ██████████ – you don’t need to know any more,” Kieren McCarthy, January 14, 2020, [https://www.theregister.co.uk/2020/01/14/icann\\_org\\_redacted/](https://www.theregister.co.uk/2020/01/14/icann_org_redacted/).

<sup>8</sup> PIR, ISOC, Ethos Capital, and ICANN, “PIR’s Notice of Indirect Change of Control and Entity Conversion submitted to ICANN on 14 November 2019; ICANN’s requests for additional information dated 9 December 2019; PIR’s responses to ICANN’s requests for additional information provided to ICANN on 20 December 2019,” p. 12, <https://www.icann.org/en/system/files/files/pir-isoc-ethos-capital-10jan20-en.pdf>.

HOST: So, Nora, if I may just ask you two quick questions on the point of transparency, then. Are you able to tell us now who Ethos' investors are?

Abussita-Ouri: I can tell you that all of Ethos' investors are American entities that have been checked and that we are very comfortable working with.

HOST: Meaning who?

Abussita-Ouri: I cannot give you names at this point. This is not a—I don't think it is appropriate for this conversation to be talking about the names of investors.<sup>9</sup>

PIR has even been reluctant to share the investors' identities with ICANN. On December 9, 2019, ICANN asked PIR for the identities of the investors, including the percentage of ownership each entity would have.<sup>10</sup> On December 20, 2019, PIR dismissed this important question, writing that, “[g]iven PIR’s longevity and its known and solid financial performance over the past 16 years in operating the .ORG registry, information regarding an equity investor does not seem pertinent.”<sup>11</sup> On February 19, 2020, ICANN reiterated that PIR should “provide the information previously requested.”<sup>12</sup> On March 4, 2020, PIR finally disclosed this information, on a confidential basis, to ICANN.<sup>13</sup> Public reporting has revealed the names of several large Ethos investors,<sup>14</sup> but the firm has yet to publicly disclose the full list of their backers and the potential role they would play in governance.

### **Ethos and PIR Have Not Been Transparent About Their Business Plan**

In addition to the \$775 million in equity provided by the investors, Ethos took out a \$360 million loan that will saddle PIR with hundreds of millions of dollars of debt.<sup>15</sup> PIR has estimated that interest payments for the first year will be \$20–25 million.<sup>16</sup> Private equity watchdog Americans for Financial Reform (AFR) estimated that, even providing a generous estimate of PIR’s future

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<sup>9</sup> WBUR, “Domain Wars: Nonprofit .Org Addresses Could Soon Belong To A For-Profit Company,” Meghna Chakrabarti and Wes Martin, January 21, 2020, <https://www.wbur.org/onpoint/2020/01/21/nonprofits-beware-your-org-address-could-soon-belong-to-a-for-profit-company>.

<sup>10</sup> PIR, ISOC, Ethos Capital, and ICANN, “PIR’s Notice of Indirect Change of Control and Entity Conversion submitted to ICANN on 14 November 2019; ICANN’s requests for additional information dated 9 December 2019; PIR’s responses to ICANN’s requests for additional information provided to ICANN on 20 December 2019,” p. 12, <https://www.icann.org/en/system/files/files/pir-isoc-ethos-capital-10jan20-en.pdf>.

<sup>11</sup> *Id.*, p. 24.

<sup>12</sup> Letter from John Jeffrey to Jon Nevelt, February 19, 2020, p. 2, <https://www.icann.org/en/system/files/correspondence/jeffrey-to-nevelt-19feb20-en.pdf>.

<sup>13</sup> Letter from Brian Cimboric to John Jeffrey, March 4, 2020, p. 6, <https://www.icann.org/en/system/files/correspondence/cimboric-to-jeffrey-04mar20-en.pdf>.

<sup>14</sup> The investors reportedly include funds associated with the Johnson, Perot, and Romney families. Medium, “Who’s Going to Run .ORG? Billionaire Republicans,” Jacob Malthouse, November 21, 2019, <https://medium.com/savedotorg/whos-going-to-run-org-in-a-word-the-gop-8809ef6f9679>; LA Times, “Column: The internet’s .org registry is snatched up by a private equity firm, provoking outrage,” Michael Hiltzik, December 12, 2019, <https://www.latimes.com/business/story/2019-12-12/dot-org-sale-outrage-internet-society-ethos-capital>.

<sup>15</sup> PIR, ISOC, Ethos Capital, and ICANN, “PIR’s Notice of Indirect Change of Control and Entity Conversion submitted to ICANN on 14 November 2019; ICANN’s requests for additional information dated 9 December 2019; PIR’s responses to ICANN’s requests for additional information provided to ICANN on 20 December 2019,” p. 12, <https://www.icann.org/en/system/files/files/pir-isoc-ethos-capital-10jan20-en.pdf>.

<sup>16</sup> Letter from Brian Cimboric to John Jeffrey, March 4, 2020, p. 7, <https://www.icann.org/en/system/files/correspondence/cimboric-to-jeffrey-04mar20-en.pdf>.

revenue, PIR will only generate about \$380 million of the roughly \$480 million (\$120 million in interest, on top of the \$360 million principal) that they will owe over the term of the loan.<sup>17</sup> AFR expressed skepticism that, under the private equity-imposed debt load, PIR could maintain a reliable .ORG registry and make all required payments, to say nothing of providing a return to investors.<sup>18</sup> To our knowledge, the parties to the sale have not disputed AFR's analysis.

On December 9, 2019, ICANN asked PIR a set of questions about PIR's projected finances and revenue model, including "how the funding for the operation will be developed and maintained in a stable and sustainable manner."<sup>19</sup> On December 20, 2019, PIR dismissed this question too, writing that because "PIR is a mature registry with known costs and base of revenue," they did not feel obligated to answer.<sup>20</sup> On February 19, 2020, ICANN again asked for 10 years of projected financial statements, and indicated that PIR "did not provide financial information for the post-transaction beneficial owner of PIR as requested."<sup>21</sup> On March 4, 2020, PIR once again demurred, saying that, "[t]o the extent ICANN is seeking Ethos' detailed financial projections for PIR for ten years, any such projections would necessarily be highly speculative and of extremely limited value."<sup>22</sup> ICANN should not accommodate PIR's repeated stonewalling on important questions about how PIR plans to operate in the substantially different financial environment that this deal would create.

We remain skeptical of the strategies that Ethos and PIR have described for raising incremental revenue. In an online meeting on February 27, 2020, Jon Neveitt, PIR's CEO, claimed, in broad generalities, that there was an untapped international market for .ORG registrants, but to our knowledge the parties to the sale have not provided or cited any market research to support this claim.<sup>23</sup> This claim may run counter to a central claim and motivation for the acquisition, which is that, as Mr. Neveitt said later in that meeting, .ORG is already "the crown jewel of the domain name system...the most trusted domain name out there."<sup>24</sup> PIR's own data show that the market for .ORG registrations may actually be saturated. The combined number of yearly new and renewal registrations declined steadily between 2015 and 2018, the most recent year for which

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<sup>17</sup> ICANN, "ICANN67 Virtual - Public Forum 1: Community Dialogue on the Proposed Transfer of Ownership of the Public Interest Registry," March 9, 2020, p. 25, <https://static.ptbl.co/static/attachments/237710/1583796929.pdf?1583796929>.

<sup>18</sup> Letter from Electronic Frontier Foundation and Americans for Financial Reform Education Fund to ICANN leadership, February 21, 2020, p. 2, <https://www.eff.org/document/eff-afref-letter-icann-about-sale-pir>.

<sup>19</sup> PIR, ISOC, Ethos Capital, and ICANN, "PIR's Notice of Indirect Change of Control and Entity Conversion submitted to ICANN on 14 November 2019; ICANN's requests for additional information dated 9 December 2019; PIR's responses to ICANN's requests for additional information provided to ICANN on 20 December 2019," p. 17, <https://www.icann.org/en/system/files/files/pir-isoc-ethos-capital-10jan20-en.pdf>.

<sup>20</sup> *Id.*, p. 21.

<sup>21</sup> Letter from John Jeffrey to Jon Neveitt, February 19, 2020, p. 4, <https://www.icann.org/en/system/files/correspondence/jeffrey-to-neveitt-19feb20-en.pdf>.

<sup>22</sup> Letter from Brian Cimboric to John Jeffrey, March 4, 2020, p. 9, <https://www.icann.org/en/system/files/correspondence/cimboric-to-jeffrey-04mar20-en.pdf>.

<sup>23</sup> "The future of .ORG: Community Engagement," Erik Brooks, Allen Grogan, Nora Abusitta-Ouri, Jon Neveitt, and Andrew Sullivan, online meeting moderated by Shane Tews, February 27, 2020, p. 12, <https://static1.squarespace.com/static/5dd7f6113c431419c139b89d/t/5e595efad1073f083c0a7c16/1582915325913/Ther+Future+of+.ORG+Community+Engagement+Transcript+2.28.20.pdf>.

<sup>24</sup> *Id.*, p. 19.

we have data; over this period, the number of yearly new registrations decreased by about 30%.  
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Since announcing the proposed transaction, Ethos and PIR have repeatedly said that they plan to create new “products and services”<sup>26</sup> for the .ORG community but have not described these services in any detail. In the online meeting, PIR and Ethos were asked specifically what new products and services they would be able to provide after the sale. Mr. Nevett again provided no details, giving a circular answer like that of a student who had not done their reading: “New products and services, we’re doing market research... I invite folks on the webinar to contact us and to reach out to us, and help us provide information that will enable us to provide the right products and services that would be helpful.”<sup>27</sup> Erik Brooks, Ethos’ CEO, described the development of an unspecified “product roadmap,” said that “we already have a number of ideas,” and noted that Ethos is “in the business of taking risks in order to figure out new products and services.”<sup>28</sup> Neither speaker provided a single, clear example of a useful new product or service that would be offered in exchange for the private equity-funded takeover of the .ORG domain, or an explanation of how .ORG being operated by a company that is “in the business of taking risks” would be in the public interest. In addition, no other registries appear to have rolled out unique services for the domains they manage. Neither PIR nor Ethos has given insights into what unique assets or capabilities PIR could leverage to offer such services, instead emphasizing how little private data, for example, they have access to.

In the online meeting, Ethos was also asked how it plans to “make money without dramatically raising prices or cutting services.”<sup>29</sup> In response, Mr. Brooks noted that PIR’s cash flow has grown at about 10% or 11% per year in recent years, and indicated that the business plan is to just watch that cash flow continue to grow. He did not indicate how or why he expects PIR’s continued growth. Nor did he account for the tax burden that will be created by the sale’s conversion of PIR to a for-profit entity and its subsequent relinquishment of tax-exempt status.<sup>30</sup> We are concerned that the only options to increase cash flow involve raising registration fees and imposing other ancillary fees, or offering services to third parties that might conflict with the interests of .ORG registrants.<sup>31</sup>

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<sup>25</sup> Public Interest Registry, 2018 Annual Report, July 18, 2019, p. 16, <https://thenew.org/app/uploads/2019/09/PIR-2018-Annual-Report.pdf>.

<sup>26</sup> The Nonprofit Times, “Commentary: What Makes Ethos Capital A Responsible Steward Of PIR?” Nora Abusitta-Ouri, December 23, 2019, [https://www.thenonprofittimes.com/npt\\_articles/commentary-what-makes-ethos-capital-a-responsible-steward-of-pir/](https://www.thenonprofittimes.com/npt_articles/commentary-what-makes-ethos-capital-a-responsible-steward-of-pir/).

<sup>27</sup> “The future of .ORG: Community Engagement,” Erik Brooks, Allen Grogan, Nora Abusitta-Ouri, Jon Nevett, and Andrew Sullivan, online meeting moderated by Shane Tews, February 27, 2020, p. 17, <https://static1.squarespace.com/static/5dd7f6113c431419c139b89d/t/5e595efad1073f083c0a7c16/1582915325913/Te+Future+of+.ORG+Community+Engagement+Transcript+2.28.20.pdf>.

<sup>28</sup> *Id.*, p. 18.

<sup>29</sup> “The future of .ORG: Community Engagement,” Erik Brooks, Allen Grogan, Nora Abusitta-Ouri, Jon Nevett, and Andrew Sullivan, online meeting moderated by Shane Tews, February 27, 2020, p. 13, <https://static1.squarespace.com/static/5dd7f6113c431419c139b89d/t/5e595efad1073f083c0a7c16/1582915325913/Te+Future+of+.ORG+Community+Engagement+Transcript+2.28.20.pdf>.

<sup>30</sup> Electronic Frontier Foundation, “.ORG Isn’t Broken, and We Don’t Need Private Equity to ‘Fix’ It,” Cara Gagliano, March 4, 2020, <https://www.eff.org/deeplinks/2020/03/org-isnt-broken-and-we-dont-need-private-equity-fix-it>.

<sup>31</sup> Letter from Senators Elizabeth Warren, Ron Wyden, Richard Blumenthal, and Edward J. Markey, and Representatives Anna G. Eshoo and Mark Pocan to ICANN leadership, January 16, 2020,

## Ethos' Commitment to Limit Pricing Increases is Weak

On February 21, 2020, Ethos and PIR released the text of proposed agreements to be attached to PIR's .ORG registry agreement with ICANN, addressing the issues of pricing increases and oversight of the post-sale PIR.<sup>32</sup> These agreements were released in the form of voluntary Public Interest Commitments (PICs), a relatively recent contractual mechanism offered by ICANN. Experts have questioned whether PICs are an appropriate or effective mechanism for establishing these kinds of commitments.<sup>33</sup> A member of the group that founded ICANN and former PIR director of policy has described the PICs as “weakly enforceable” and described the PIC enforcement mechanism as “untested and unscoped for this purpose.”<sup>34</sup> Instead of using PICs, Ethos and PIR could have made stronger commitments by, for example, reverting to the pre-2019 .ORG registry agreement that had clear contractual agreements to limit pricing increases, and contained no express permission to censor website content at the request of third parties.<sup>35</sup>

In addition to the fact that they are not clearly enforceable, the commitments written into the PICs are weak. The pricing-related PIC does not address the concern raised by non-profits that Ethos would have the authority to raise registration fees on .ORG registrants in the long term.<sup>36</sup> The PIC allows the registry to increase registration fees by up to 10% each year<sup>37</sup>—which is more than three times higher than the average yearly price increase on the .ORG domain since 2003.<sup>38</sup> The allotted 10% increase would mean that within eight years of the registry agreement's effective date in June 2019 (that is, within seven years of the proposed mid-2020 sale), Ethos would be able to double the registration fee. Moreover, these pricing increases would be completely unwarranted, as they are unrelated to any increase in the cost of providing the service.

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<https://www.warren.senate.gov/imo/media/doc/2020.01.16%20Letter%20to%20ICANN%20about%20sale%20of%20.ORG%20registry.pdf>.

<sup>32</sup> Ethos Capital, “Public Interest Commitments,” March 16, 2020,

<https://static1.squarespace.com/static/5dd7f6113c431419c139b89d/t/5e6fe9e664a4a445ad06fb2c/1584392679015/PIC+%283-16-20%29%5B1%5D.pdf>.

<sup>33</sup> Electronic Frontier Foundation, “NGO Community Urges ICANN to Scrutinize the .ORG Sale,” Elliot Harmon and Mitch Stoltz, March 9, 2020, <https://www.eff.org/deeplinks/2020/03/ngo-community-urges-icann-scrutinize-org-sale>.

<sup>34</sup> CircleID, “The Sad Story of Private Public Interest Commitments (PICs),” Kathy Kleiman, March 11, 2020, <http://www.circleid.com/posts/20200311-the-sad-story-of-private-public-interest-commitments-pics/>.

<sup>35</sup> ICANN, “.org Registry Agreement | Archive,” <https://www.icann.org/resources/agreement/org-archive-1999-11-10-en>.

<sup>36</sup> Electronic Frontier Foundation, “EFF Calls For Disclosure of Secret Financing Details Behind \$1.1 Billion .ORG Sale, Asks FTC To Scrutinize Deal,” press release, February 21, 2020, <https://www.eff.org/press/releases/eff-seeks-disclosure-secret-financing-details-behind-11-billion-org-sale-asks-ftc>.

<sup>37</sup> Ethos Capital, “Public Interest Commitments,” February 21, 2020, <https://static1.squarespace.com/static/5dd7f6113c431419c139b89d/t/5e4fd13faf4f647b886ca187/1582289215311/20200220+PIC.pdf>

<sup>38</sup> Flother, “Price of .org domains has risen by 3% annually, far below 10% price cap,” Matt Riggott, December 14, 2019, <https://flother.is/2019/dot-org-prices/>.

Even worse, the price limit is entirely lifted after eight years of the ten-year registry agreement have passed.<sup>39</sup> When asked about the eight-year pricing limit, Mr. Brooks responded that “eight years was a reasonable period of time within which to give people security, but also you know, give ourselves the opportunity collectively to make good decisions for the community and the business.”<sup>40</sup> Private equity firms typically hold their investment for less than ten years so this eight-year clock is likely timed to allow Ethos to jack up rates in preparation for selling PIR.<sup>41</sup> Accordingly, AFREF has asked ICANN to inquire whether PIR or ISOC have included any pre-conditions for any future sale of PIR.<sup>42</sup>

Finally, in our January 16, 2020, letter, we raised concerns that any commitments made by Ethos to limit pricing increases—including the released PIC—would not preclude them from imposing increased fees in areas other than initial or renewal registrations.<sup>43</sup> On January 22, 2020, ISOC sent a letter to ICANN responding to our letter but did not address the question of ancillary fees.<sup>44</sup> Accordingly, we remain concerned that, if the sale is approved, Ethos can and will impose unlimited additional fees on registrants or registrars, which would not be addressed by the PIC’s price limit on registration fees.

### **Ethos’ Proposed “Stewardship Council” Would Be Toothless**

Another PIC fleshes out a “stewardship council,” designed to address concerns that the new for-profit PIR would operate with limited oversight and accountability to anyone but general partners in the fund. Ethos has claimed that this council will “provide independent advice on and a binding right to veto modifications proposed by PIR” in some policy areas.<sup>45</sup>

But the council would have limited power over PIR and only weak enforcement tools at its disposal. First, many of the most consequential decisions that PIR will make are outside of the council’s purview. The council will not have the power to veto decisions about, or provide

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<sup>39</sup> ICANN, Registry Agreement between ICANN and PIR, effective June 30, 2019, <https://www.icann.org/sites/default/files/tlds/org/org-agmt-html-30jun19-en.htm>; Ethos Capital, “Public Interest Commitments,” February 21, 2020, <https://static1.squarespace.com/static/5dd7f6113c431419c139b89d/t/5e4fd13faf4f647b886ca187/1582289215311/20200220+PIC.pdf>.

<sup>40</sup> “The future of .ORG: Community Engagement,” Erik Brooks, Allen Grogan, Nora Abusitta-Ouri, Jon Nevett, and Andrew Sullivan, online meeting moderated by Shane Tews, February 27, 2020, p. 15, <https://static1.squarespace.com/static/5dd7f6113c431419c139b89d/t/5e595efad1073f083c0a7c16/1582915325913/The+Future+of+.ORG+Community+Engagement+Transcript+2.28.20.pdf>.

<sup>41</sup> Journal of Economic Perspectives, “Leveraged Buyouts and Private Equity,” Steven N. Kaplan and Per Strömberg, July 2008, <https://faculty.chicagobooth.edu/steven.kaplan/research/ksjep.pdf>.

<sup>42</sup> Letter from Electronic Frontier Foundation and Americans for Financial Reform Education Fund to ICANN leadership, February 21, 2020, p. 4, <https://www.eff.org/document/eff-afref-letter-icann-about-sale-pir>.

<sup>43</sup> Letter from Senators Elizabeth Warren, Ron Wyden, Richard Blumenthal, and Edward J. Markey, and Representatives Anna G. Eshoo and Mark Pocan to ICANN leadership, January 16, 2020, <https://www.warren.senate.gov/imo/media/doc/2020.01.16%20Letter%20to%20ICANN%20about%20sale%20of%200.ORG%20registry.pdf>.

<sup>44</sup> Letter from Andrew Sullivan, Jon Nevett, and Erik Brooks to ICANN leadership, January 22, 2020, <https://www.icann.org/en/system/files/correspondence/sullivan-et-al-to-marby-et-al-22jan20-en.pdf>.

<sup>45</sup> Ethos Capital, Public Interest Registry, and Internet Society, “Ethos Capital Announces Accountability Initiatives to Secure a Strong Future for .ORG,” press release, February 21, 2020, <https://www.keypointabout.org/pressrelease>.

“advice or recommendations regarding[,] day-to-day operational matters, financial or budgeting matters, or pricing of PIR services.”<sup>46</sup> The council charter also does not require that any experts be appointed to the council who are experts in free speech, fair use, digital rights and privacy, topics of critical importance to the .ORG community.<sup>47</sup>

Second, the council is only weakly empowered to address PIR policy. PIR currently has great freedom to take down websites based on requests from trademark holders and law enforcement, and the way PIR exercises that authority has huge implications on freedom of speech in .ORG.<sup>48</sup> But the council has no written power to access information about how PIR interprets and implements policy. Nor can it create or change policy—it can only veto proposed changes. The council’s authority would be so limited that it is effectively rendered powerless.

Third, even on topics within the council’s purview where it might exercise veto authority, including issues that we raised in our January 16, 2020, letter, such as “censorship of free expression” and “use or disclosure of registration or other personal data,”<sup>49</sup> the council’s structure does not provide the tools necessary to exercise meaningful oversight. A two-thirds vote of the seven-person council would be required to veto any decision made by PIR, meaning that as long as two of the seven members were inclined to defer to PIR or Ethos, they could defeat any proposed veto.<sup>50</sup> A first draft of the council charter specified that the PIR Board would select and appoint five of the seven inaugural members.<sup>51</sup> A second draft specified that an executive search firm will “oversee and manage a process for identifying candidates for the initial members” of the council; however, all candidates for council membership, whether an inaugural or subsequently-appointed member, remain “subject to PIR Board approval.”<sup>52</sup> This effectively gives the PIR Board veto authority over any and all council decisions—the opposite of the independence that Ethos and PIR have touted as the key attribute of the council.

Finally, the PIC establishing the council allows PIR to ignore the council’s determinations entirely. After describing the council’s authority, the PIC reads: “Notwithstanding the foregoing,

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<sup>46</sup> Ethos Capital, “.ORG Stewardship Council Charter,” March 16, 2020, <https://static1.squarespace.com/static/5dd7f6113c431419c139b89d/t/5e6fea1d102e21494ff175c5/1584392735384/ORG+Stewardship+Council+Charter+%283-16-20%29%5B1%5D.pdf>.

<sup>47</sup> Electronic Frontier Foundation, “We Need To Save .ORG From Arbitrary Censorship By Halting the Private Equity Buy-Out,” Mitch Stoltz, December 5, 2019, <https://www.eff.org/deeplinks/2019/12/we-need-save-org-arbitrary-censorship-halting-private-equity-buy-out>.

<sup>48</sup> *Id.*

<sup>49</sup> Letter from Senators Elizabeth Warren, Ron Wyden, Richard Blumenthal, and Edward J. Markey, and Representatives Anna G. Eshoo and Mark Pocan to ICANN leadership, January 16, 2020, <https://www.warren.senate.gov/imo/media/doc/2020.01.16%20Letter%20to%20ICANN%20about%20sale%20of%200.ORG%20registry.pdf>.

<sup>50</sup> Ethos Capital, “.ORG Stewardship Council Charter,” March 16, 2020, p. 4, <https://static1.squarespace.com/static/5dd7f6113c431419c139b89d/t/5e6fea1d102e21494ff175c5/1584392735384/ORG+Stewardship+Council+Charter+%283-16-20%29%5B1%5D.pdf>.

<sup>51</sup> Ethos Capital, “.ORG Stewardship Council Charter,” February 21, 2020, p. 2, <https://static1.squarespace.com/static/5dd7f6113c431419c139b89d/t/5e4fd16017c3825f21c5756d/1582289248176/0200220+ORG+Stewardship+Council+Charter.pdf>.

<sup>52</sup> Ethos Capital, “.ORG Stewardship Council Charter Redline,” March 16, 2020, p. 3, <https://static1.squarespace.com/static/5dd7f6113c431419c139b89d/t/5e6fea0a0e6a5951ac7cad97/1584392714275/REDLINE+-+ORG+Stewardship+Council+Charter+%283-16-20%29%5B1%5D.pdf>.

Registry Operator reserves the right at all times to ensure compliance in its sole judgment with applicable laws, policies and regulations.”<sup>53</sup>

**ICANN Should Reject the Proposed Transfer of the .ORG Registry.**

In the months since Ethos announced its intent to purchase PIR from ISOC, the .ORG community has been vocal and virtually unanimous in its opposition to the sale. Over 800 organizations and 25,000 people have signed a petition urging ICANN to block the proposed change of control.<sup>54</sup>

Ethos, PIR, and ISOC have fielded questions from us, from the community, and from ICANN, and they have provided answers on pricing, business plans, and transparency that continue to indicate that the sale would not benefit the public or .ORG registrants.

Because the proposed sale of .ORG is against the public interest and would violate ICANN’s commitment to “preserve and enhance...the operational stability, reliability, security...and openness of the DNS and the Internet,”<sup>55</sup> we again urge you to reject this private equity takeover of the .ORG registry.

Sincerely,



Elizabeth Warren  
United States Senator



Ron Wyden  
United States Senator



Richard Blumenthal  
United States Senator



Anna G. Eshoo  
United States Representative



Edward J. Markey  
United States Senator

<sup>53</sup> Ethos Capital, “Public Interest Commitments,” March 16, 2020, <https://static1.squarespace.com/static/5dd7f6113c431419c139b89d/t/5e6fe9e664a4a445ad06fb2c/1584392679015/PIC+%283-16-20%29%5B1%5D.pdf>.

<sup>54</sup> Letter from organizations and individuals to ISOC, PIR, and ICANN, November 22, 2019, <https://savedotorg.org/>.

<sup>55</sup> ICANN Bylaws, Section 1.2(a)(i), <https://www.icann.org/resources/pages/governance/bylaws-en>.