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AT-LARGE ADVISORY COMMITTEE ALAC Advice to the ICANN Board on the ISOC/PIR Issue

The proposed sale of PIR to Ethos Capital has, understandably, created quite a stir, prompting commentary from many perspectives within the ICANN community. As a member of that community, the At-Large generally, and the ALAC specifically, join with others in expressing our frustration with the manner with which the proposed transaction came to light, the complexity and opacity of the transaction and the optics inherent in both the timing and individuals involved. We applaud the efforts by the ICANN Board to clarify and make transparent, as much as possible, the process regarding the deal and to take the time to encourage the best possible result.

However, in acting on the interests of individual end users of the DNS, the At-Large must focus our commentary and advice on the practical implications of the deal and make recommendations designed to best safeguard the interests of those individual end users. The most significant implications for individual end users are the security of and trust in the .ORG TLD. This suggests that we need to focus less on the characteristics of the eventual registry and more on the characteristics of the eventual registrants of .ORG second level domains and the best place to safeguard the interests of individual end users is in the Registry Agreement.

Approval of the transaction, by the ICANN Board, must be conditioned on amendments to the .ORG contract designed to capture, as much as possible, the intentions of the original RFP which awarded the contract to ISOC in the first place and encourage the predominant makeup of the .ORG space to remain the most trusted TLD for non-profit entities and individuals. While disapproval of the transaction by the ICANN Board might be problematic, the Board should be prepared to block the transfer of ownership of the registry on the basis of the public interest, absent significant changes to the .ORG contract because those changes are the only real way to safeguard the long term interests of not only individual end users but nonprofits as well, regardless of the entity to which the right to operate the .ORG TLD is granted under the registry contract.

Observations

1. *The ICANN Board has a “reasonable” basis to withhold approval of the sale.*
The original RFP provides explicit expectations about the intended characteristics of a .ORG registry and a requirement to serve the nonprofit community.
2. *The .ORG TLD now has history.*
At the time of the original award to ISOC, it was only possible to express intentions for the domain in the most vague terms. There is now a record of activity within the domain to form the basis of more specific public interest requirements for the domain. In addition, the Board has recently announced a framework from within which to consider the public interest.
3. *.ORG is the only large gTLD that is committed to operate in the public interest.*
One of the reasons for ICANN to exist was to introduce competition in the DNS marketplace. It did so by splitting the registry and the registrar function, introducing competition at the registrar level, but also by re-delegating .ORG to a non-profit. This has ensured not only to have a champion of good practices, but also to increase competition because .ORG has a different business model, that is not oriented exclusively to maximisation of the profit. Disappearance of this alternative business model will substantially reduce the competition in the marketplace.

Recommendations

1. **The Registry for .ORG must be organized as either a charitable non-profit [501c(3) in the US] or a “Benefit Corporation” (B Corporation).**
Additionally, the Registry must receive and maintain B Corporation certification.
2. **One-third of the Registry Corporate Board must be representatives of charitable nonprofits.**
The designation of such nonprofits in the US is 501c(3) but a list of similar designations internationally should be generated.
3. **One Board member selected by the ALAC.**
Ideally, at least one member or small group of members of the corporate Board should have the explicit mandate to focus on the overall public interest and specifically the interests of individual end users.
4. **The Registry for .ORG must enshrine in its bylaws that the principal focus of the domain is nonprofits and individuals and not commercial interests.**
5. **The Registry must enshrine in its bylaws a commitment to free speech and a resistance to takedown demands with a political basis.**
6. **The Registry must provide 6 months prior written notice to its registrants of any increase in wholesale price of their domain names registration renewal fees and the option of a 20-year renewal thereof at the pre-increase price.**
7. **The Registry Agreement must enshrine PIR prohibited practices such a bulk sales to commercial registrars.**
8. **The Registry Agreement must establish a “DNS Abuse Ceiling”.**
The RA should contain both a reference to an ICANN community established definition of DNS Abuse as well as an explicit ceiling in terms of a percentage of second level domains engaged in DNS Abuse as material terms. Failure to address DNS Abuse above this ceiling will constitute a breach of the RA and grounds for terminating the RA and for re-delegation of .ORG by ICANN.

The ALAC respectfully submits that .ORG is a special domain that requires unique requirements or enforceable Public interest Commitments (PICs) within the registry agreement. It is only through explicit requirements in the RA that .ORG has the best hope of maintaining the public trust it has largely earned since the original RFP. Maintaining a top level domain devoted primarily to nonprofits and individuals is critical to the internet community and the Board should be prepared, however reluctantly, to block the sale of PIR to Ethos Capital, absent substantial changes to the Registry Agreement under which Ethos, or any future entity (whether owner or assignee), must manage the domain.

The ALAC appreciates the opportunity to comment on this process and hope its recommendations will be taken into consideration. The ALAC looks forward to further discussion on this historic transaction.