

EFF and NTEN response to Ethos Capital announcement

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Dear Fadi Chehadé, Erik Brooks, and Jon Nevett:

We are writing in response to your announcement of “accountability initiatives” to follow the proposed sale of the .ORG registry.

While you have clearly recognized that the NGO community demands accountability from its top-level domain registry, this announcement does nothing to display that accountability. Rather than instill trust, it reveals once again that you lack understanding of the NGO community’s needs and are not equipped to manage .ORG.

The proposed “Stewardship Council” would fail to protect the interests of the NGO community. First, the council is not independent. The Public Interest Registry (PIR) board’s ability to veto nominated members would ensure that the council will not include members willing to challenge Ethos’ decisions. PIR’s handpicked members are likely to retain their seats indefinitely. The NGO community must have a real say in the direction of the .ORG registry, not a nominal rubber stamp exercised by people who owe their position to PIR.

Moreover, your proposal gives the Stewardship Council authority only to veto changes to existing PIR policies concerning 1) use or disclosure of registration data or other personal data of .ORG domain name registrants and users, and 2) appropriate limitations and safeguards regarding censorship of free expression in the .ORG domain name space. While these areas are important, they do not represent the universe of issues where PIR’s interest might diverge from the interest of .ORG domain registrants.

And even within these areas, PIR would “reserve the right at all times in [its] sole judgment to take actions consistent with PIR’s Anti-Abuse Policy and to ensure compliance with applicable laws, policies and regulations.” In other words, the Stewardship Council would be powerless to intervene so long as PIR maintained that a given act of censorship was consistent with its Anti-Abuse Policy or required by some government. Your proposal further cabins the council’s authority by placing anything that can be construed as “advice or recommendations regarding day-to-day operational matters, financial or budgeting matters, or pricing of PIR services” out of bounds. It would be trivially easy to categorize any number of harmful practices as “operational matters.”

The proposal also fails to provide members of the Stewardship Council with any guaranteed means of accessing information relevant to its decision making, such as the rationale for planned policy changes or details of how PIR’s policies are actually being implemented. An advisory council that is kept in the dark cannot exercise meaningful oversight. As neither PIR’s

existing advisory council nor the Internet Society's two advisory councils were informed of the sale to Ethos before it was agreed to, the NGO community can have little confidence in a reconstituted advisory council with no guaranteed access to relevant information.

Your promises about .ORG registration fees likewise fail to provide comfort to the NGO community. Under the restrictions you've proposed, PIR could more than double the registration fees over eight years, with no restrictions at all after that period of time. This limit represents much greater annual increases than PIR has levied on .ORG registrants over the past 17 years. What's more, as noted above, the proposed Stewardship Council charter specifically bars the council from intervening in "financial matters," giving the council no leverage for stopping fee hikes after eight years. The relevant question is not what registrants can afford; it's why a for-profit company should siphon ever more value from the NGO sector year after year. The cost of operating a registry has gone down since 2002, not up.

Ultimately, the proposed Stewardship Council does nothing to address the concerns that NGOs have been raising about the leadership and direction of .ORG. It's another symptom of the underlying problem, that the terms of the sale were already decided before we were consulted on it.

Since the proposed sale was announced, you have neglected to provide even basic information about critical financial details of the transaction, as EFF and the Americans for Financial Reform Education Fund outlined in their February 21 letter to ICANN. ICANN General Counsel John Jeffrey's letter of February 19 confirms that you have not even provided this information to ICANN. Given the scant financial details about this deal that have been made public, there is a serious question of whether PIR will be able to remain solvent while repaying the debt you plan to impose on it. If the new entity were to collapse, that would be a disaster for the community.

You have made vague promises about the "products and services" that a for-profit model will allow PIR to offer to the NGO community. The product NGOs need from our registry operator is domain registration at a fair price that doesn't increase arbitrarily. The service that operator must provide is to stand up to governments and other powerful actors when they demand that it silence us. It is more clear than ever that you cannot offer us either.

Amy Sample Ward, CEO, NTEN

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