



Via Email: cherine.chalaby@board.icann.org
cyrus.namazi@icann.org
correspondence@icann.org

May 17, 2019

ICANN Board of Directors
c/o Mr. Cherine Chalaby, Chair
12025 Waterfront Drive, Suite 300
Los Angeles, California
90094-2536, USA

Mr. Cyrus Namazi
Senior Vice President, Global Domains Division
12025 Waterfront Drive, Suite 300
Los Angeles, California
90094-2536, USA

Dear Sirs:

Re: Proposed Renewal of .ORG Registry Agreement

In order to assist the Board in its deliberations on the Proposed Renewal of the .org Registry Agreement, we have prepared the enclosed brief "Frequently Asked Questions" on the subject.

Yours truly,
INTERNET COMMERCE ASSOCIATION

Per:
Zak Muscovitch
General Counsel, ICA

cc: John Jeffrey, ICANN General Counsel (john.jeffrey@icann.org)

Encl.



Proposed New .ORG Registry Agreement FAQ

Frequently Asked Questions Prepared for the ICANN Board by the ICA on May 17, 2019.

Q: Who owns the .ORG registry?

A: ICANN is essentially a trustee of .ORG on behalf of the “global public interest”, making it the de facto “owner” of the .ORG registry.

Q: What is PIR’s role in the .ORG registry?

A: ICANN contracted PIR to manage the .ORG registry on ICANN’s behalf pursuant to the .ORG Registry Agreement. PIR is essentially a hired “property manager” who earns a fee for its management services. PIR outsources technical operations to Afilias.

Q: Is .ORG different from a new gTLD?

A: Yes. .ORG is one of the original “legacy” extensions. It was created with the support of government and academics to serve as the online home for nonprofit entities. New gTLDs in contrast, are new namespaces owned by sponsoring companies as ordinary for-profit enterprises.

Q: Is PIR different from a new gTLD registry?

A: Yes. PIR is a manager of an existing namespace with non-commercial origins whose fees are determined by the owner, ICANN, pursuant to a contract. ICANN contracted PIR to manage the .org registry. PIR was entitled to earn fee of \$6.00 per domain name per year, with the right to raise fees capped at 10% per year. Under the new gTLD program, companies created their own new namespaces for a fee, often determined through an auction process where the bids reached millions or tens of millions of dollars, and in one case in excess of \$100 million. A new gTLD registry purchases ownership of a sponsored namespace, and as the owner can set prices as it wishes.

Q: Do .ORG registrants expect stable pricing?

A: Yes. .ORG is home to a global community of over 10 million registrants, many of whom are non-profits who chose .ORG in reliance upon ICANN’s longstanding policy of limiting price increases on registrants. If ICANN introduces price instability into .org and the other legacy extensions by removing all price caps, ICANN would effectively be applying the inappropriate new gTLD program standards to a legacy TLD, thereby diminishing the appeal and stability of .ORG to the detriment of longstanding registrants and the namespace. Removing price caps on .ORG may benefit new gTLD operators, but it does not benefit the registrants of millions of .ORG domain names nor the communities they serve.

Q: What are the problems with the Proposed New .ORG Registry Agreement?

A: There are numerous problems, but the two most serious problems are that it;

a) ignores the bottom-up multi-stakeholder policy development process by unilaterally imposing a new rights protection mechanism (the “URS”) when ICANN stakeholders are currently deliberating upon that very issue via a Working Group; and b) remove all price caps so that ICANN’s hired manager can charge registrants whatever it likes and keep all the revenue for itself, to the detriment of the registrants.

Q: Can ICANN establish price caps for .ORG domain names?

A: Yes. As the effective owner of .ORG, ICANN can require its contracted registry manager to limit price increases to those that ICANN deems in the public interest. Sometimes it is said that “ICANN isn’t a price regulator”, and of course it is not a regulator because it is not a government agency. However, ICANN is more than a regulator - it is the owner of .ORG and is thereby entitled to set prices on its own registry. Unless ICANN has been exceeding its authority for the past 20 years, ICANN has been properly fulfilling its responsibility as the *de facto* owner of .ORG by setting price caps on how much PIR as manager can charge ICANN’s .ORG registrants.

Q: Who wants to remove price caps on .ORG domain names?

A: Virtually no one. Over 3,000 public comments were submitted that were nearly unanimously opposed to the removal of price caps. Thousands of registrants voiced their strong opposition, including religious organizations, charitable organizations, community organizations, environmental organizations, academics, scout troops, families, and academics, the National Council of Nonprofits (with 25,000 organization members), the American Society of Association Executives (44,000 members), the YMCA, National Geographic Society, C-SPAN, AARP (38 million members), The Conservation Fund, Oceana, and National Trust for Historical Preservation.

Q: Doesn’t the objective of having consistent policies across registries require the removal of price caps on .ORG domain names?

A: No. Aligning rights protection mechanisms and other policies can be achieved in the contract without also removing price caps. It was not appropriate to include Sunrise or TMCH provisions in the proposed .org renewal agreement, due to .ORG’s nature and origin as a legacy TLD. It is similarly inappropriate to remove price caps for .ORG because it is a legacy TLD with a locked-in base of registrants, not a sponsored new gTLD.

Q: Is there any justification for increased .ORG prices?

A: No. In 2017 alone, PIR transferred \$74 million in profits demonstrating that it is clearly very profitable already. Costs of managing the .ORG registry have not gone up and have likely gone down since PIR renegotiated with its backend service provider for technical services when it put the contract out for competitive bid in 2017. A price increase from the current level of \$9.93 to \$50.00, for example, would likely result in an additional \$500 million in annual revenues for PIR in large part derived from the funds donated to nonprofits to pursue their own desired services. There is no financial justification whatsoever for a price increase which would result in an enormous transfer of money from nonprofits to PIR.

Q: Won’t competitive pressure keep .ORG prices low?

A: No. PIR makes nearly all its revenues from renewals from existing registrants. Existing registrants, especially long-established non-profits, are locked in and cannot easily move. The non-profit community will be forced to absorb any price increases, even if PIR chooses to increase prices by a factor of 10-fold or higher. Even if a non-profit, such as the Red Cross, chooses to spend millions of dollars rebranding on a different domain name and suffer the resulting loss of credibility and 30 years of back links, they still cannot conceivably abandon the RedCross.org domain name and must continue to renew it indefinitely. Registrants with an established presence on a .org domain name are in effect a captive audience forced to pay whatever ransom PIR chooses to impose for the right to continue using their .ORG online brands.

Q: As a non-profit, won't PIR exercise restraint and limit price increases?

A: Not necessarily. The proposed contract requires no restraint whatsoever. Despite a declining cost environment, PIR has continued to raise fees from time to time and has never reduced fees. While one may hope that PIR decides to exercise restraint, the only assurance that restraint will be exercised is via a contract with appropriate safeguards.

Q: Aren't Registrants Protected by the option to renew for 10 years at current prices?

A: No. There is no requirement that every registrant be given the opportunity to lock in prices for 10 years. Rather, it is expressly at the discretion of each registrar as to whether they will offer their customers this option. Moreover, after 10 years, nonprofit registrants may face untold, surprising, and unlimited price hikes, thereby merely deferring a potentially dramatic increase in pricing. Registrars and PIR may have an incentive to push existing .org registrants off of their .org domain names so that when the current registrants' rights to their domain names are terminated, the domain names can then be made available to new registrants at "premium" prices, just as occurs in the new gTLD registries, thereby transforming the nature of the .ORG namespace. New registrants who wish to make use of a .ORG domain can, under the proposed agreement, be charged any price at all and can even be charged more for renewals than the original registration cost.

Q: What is a 'worst case' scenario if price caps are removed?

A: The cherished .ORG registry could be transformed from a trusted and stable home for nonprofits all over the world, into a commercial namespace no different from sponsored new gTLDs. Existing registrants may face shocking price hikes that they would be forced to pay since moving to another domain name is prohibitively expensive and disruptive for established nonprofits. New registrants may be forced to other less appropriate TLDs that offer cheaper alternatives, thereby diluting the unique and cherished .ORG namespace. Small nonprofits may be forced to abandon their .org websites to avoid unaffordable renewal fees. They may then find their long-registered .ORG domain names auctioned off by the registry at premium prices to those who may take advantage of the residual goodwill associated with the domain name, perhaps even to perpetrate a fraud on longtime donors and supporters. This would undermine the stability and security of the namespace which has become synonymous with the public service missions across the globe.

Q: Are there anti-trust concerns?

A: Yes. The U.S. Department of Justice found that domain name registries may have market power which needs to be restrained. To-date, the DOJ has consistently required price caps on .COMs to protect the public interest. Given .ORG's special nature as the principal online home for nonprofits, the removal of price caps could compel regulatory authorities to step in, as they did with .COM, in order to protect the public interest due to ICANN's failure to do so itself. As a private, non-government actor, ICANN may be exposed to risk from violating anti-trust laws by creating undue market power via perpetual no-bid contracts for legacy TLD operators, and then failing to impose price constraints. Once ICANN awarded perpetual contracts with no bids, it cannot claim that removing price caps creates competition, when in reality, it creates even greater unchecked market power for the registry operator.

Q: Has ICANN undertaken an economic study of the extent of "market power" and the effect on prices?

A: No. In fact, the Competition, Consumer Trust, and Consumer Choice Review report specifically recommended at Page 57, that ICANN study this issue, but such a study has not yet been undertaken, while moving ahead anyways with the removal of price caps on .ORG.