

April 14, 2020

BY EMAIL

Hon. Xavier Becerra, Attorney General of California
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1300 I Street, Suite 1740
Sacramento, CA 95814-2954

Hon. Josh Shapiro, Attorney General of the Commonwealth of Pennsylvania
(<https://www.attorneygeneral.gov/contact/>)
1600 Strawberry Square, 10th Floor
Harrisburg, PA 17120

Dear General Becerra and General Shapiro:

As the founding President (Mr. Roberts) and the founding Board Chair of ICANN (Ms. Dyson), we write to express our deep dismay at ICANN's rejection of its defining public-interest regulatory purpose as demonstrated in the totally inappropriate proposed sale of the .ORG delegation. ICANN is failing to deliver on the purpose it was created to serve, and is abandoning its core duty to protect the public interest.

This can be clearly seen in ICANN's unequivocal rejection of their "Empowered Community" oversight, which was a condition of the lifting of its U.S. Department of Commerce oversight:
<https://www.icann.org/en/system/files/correspondence/jeffrey-to-robles-04feb20-en.pdf>

It can also be clearly seen in ICANN's removal of wholesale price regulation from the .ORG domain despite near-unanimous public input; of more than 3,300 comments, only six, (all from industry lobbyists) supported deregulation, while more than 3,200 were opposed:
https://www.theregister.co.uk/2019/07/01/org_domain_icann/

And it can be seen in ICANN's signaling that it is prepared to accept an unenforceable fig-leaf of a "public interest commitment" in lieu of answers to critical questions about beneficial control, pricing, use of data and service-level guarantees, all of which should be the foremost considerations of any regulatory agency: https://www.theregister.co.uk/2020/04/13/icann_org_selloff/

Despite all parties' acknowledgement that it is ICANN's responsibility to ensure the continued reliability, integrity and stability of the .ORG domain, ICANN has not meaningfully acted to address the likely proposed service cuts, increase in prices or trafficking of data of non-profits to obtain additional revenue.

This is a matter of urgency, since it is our understanding that ICANN currently faces a self-imposed April 20 deadline to decide on the matter of the attempted sale of the .ORG domain delegation to an unqualified private equity firm, circumventing ICANN's clearly defined open, competitive, multi-stakeholder process. This attempt to bypass the discipline of competition, open process, and stakeholder governance ensures the worst possible outcome for the public, as well as creating an egregious precedent. If ICANN were simply required to follow its own established process, as for the last re-delegation of .ORG in 2002, it would at least yield a reasonable outcome with reasonable accountability.

Those who seek to evade the process are attempting to rush it through under cover of the pandemic, which has appropriately overshadowed public concern.

We ask that each of you take the necessary initiative to obtain a suspension of any changes to .ORG for a further period of at least six months, to permit your offices, ICANN and the US Congress, which cannot

meet physically, to revisit the questions of ICANN's process and public-interest regulatory duty at a point when the pandemic is no longer the public's principal concern.

As leaders of ICANN in its formative stage, we are prepared to provide declarations or affidavits under oath describing in detail our reason for believing that ISOC, ICANN and all involved in this affair have made decisions that violate the best practices and principles established previously. We urge Attorney General Shapiro to challenge what is occurring in Pennsylvania Courts and direct its action against PIR, and Attorney General Becerra in California to directly hold ICANN accountable.

Thank you,



Michael Roberts
ICANN CEO, 1998-2001



Esther Dyson
ICANN Board Chair, 1998-2000

cc: Sandra Barrientos, Deputy Attorney General
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John Jeffrey, ICANN General Counsel