

From: Robert E. Rutkowski
Sent: April 2, 2021

Göran Marby, President
Maarten Botterman, Board Chair
ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
Phone: +1 310 301 5800
Fax: +1 310 823 8649
Email: correspondence@icann.org

Re: Change of control of Donuts Inc.—Acquisition by Ethos Capital

Dear President and Chair:

Ethos Capital is at it again. In 2019, this secretive private equity firm that includes insiders from the domain name industry tried to buy the nonprofit that runs the .ORG domain. A huge coalition of nonprofits and users spoke out. Governments expressed alarm, and ICANN (the entity in charge of the internet’s domain name system) scuttled the sale. Now Ethos is buying a controlling stake in Donuts, the largest operator of “new generic top-level domains.” Donuts controls a large swathe of the domain name space. And through a recent acquisition, it also runs the technical operations of the .ORG domain. This acquisition raises the threat of increased censorship-for-profit: suspending or transferring domain names against the wishes of the user at the request of powerful corporations or governments. That’s why the ICANN Board should demand changes to Donuts’ registry contracts to protect its users’ speech rights.

Donuts is big. It operates about 240 top-level domains, including .charity, .community, .fund, .healthcare, .news, .republican, and .university. And last year it bought Afiliis, another registry company that also runs the technical operations of the .ORG domain. Donuts already has questionable practices when it comes to safeguarding its users’ speech rights. Its contracts with ICANN contain unusual provisions that give Donuts an unreviewable and effectively unlimited right to suspend domain names—causing websites and other internet services to disappear.

Relying on those contracts, Donuts has cozied up to powerful corporate interests at the expense of its users. In 2016, Donuts made an agreement with the Motion Picture Association to suspend domain names of websites that MPA accused of copyright infringement, without any court process or

right of appeal. These suspensions happen without transparency: Donuts and MPA haven't even disclosed the number of domains that have been suspended through their agreement since 2017.

Donuts also gives trademark holders the ability to pay to block the registration of domain names across all of Donuts' top-level domains. In effect, this lets trademark holders "own" words and prevent others from using them as domain names, even in top-level domains that have nothing to do with the products or services for which a trademark is used. It's a legal entitlement that isn't part of any country's trademark law, and it was considered and rejected by ICANN's multistakeholder policy-making community.

These practices could accelerate and expand with Ethos Capital at the helm. As we learned last year during the fight for .ORG, Ethos expects to deliver high returns to its investors while preserving its ability to change the rules for domain name registrants, potentially in harmful ways. Ethos refused meaningful dialogue with domain name users, instead proposing an illusion of public oversight and promoting it with a slick public relations campaign. And private equity investors have a sordid record of buying up vital institutions like hospitals, burdening them with debt, and leaving them financially shaky or even insolvent.

Although Ethos's purchase of Donuts appears to have been approved by regulators, ICANN should still intervene. Like all registry operators, Donuts has contracts with ICANN that allow it to run the registry databases for its domains. ICANN should give this acquisition as much scrutiny as it gave Ethos's attempt to buy .ORG. And to prevent Ethos and Donuts from selling censorship as a service at the expense of domain name users, ICANN should insist on removing the broad grants of censorship power from Donuts' registry contracts. ICANN did the right thing last year when confronted with the takeover of .ORG. I hope it does the right thing again by reining in Ethos and Donuts.

Re: EFF letter:

[https://urldefense.com/v3/https://www.eff.org/document/letter-icann-board-about-ethos-acquisition-donuts ;!!PtGJab4!s wRnlWd3ypoGJZC0p-GibmaF4Wi8CWxfKlBaUkWLpr9NciN2pLmPGCy4O3L_qu0Y6r92e05xQ\\$](https://urldefense.com/v3/https://www.eff.org/document/letter-icann-board-about-ethos-acquisition-donuts)

Yours sincerely,
Robert E. Rutkowski

cc:
Legislative Correspondence Team

Longworth House Office Building
Washington DC 20515

Contact Information Redacted

Contact Information Redacted

[Redacted]

[Redacted]

[Redacted]