

1. Requester Information

Name: Constantinos Roussos

Address: Contact Information Redacted

Email: Contact Information Redacted with a copy to counsel,

2. Request for Reconsideration of: X Staff action/inaction

3. Description of specific action you are seeking to have reconsidered.

DotMusic is challenging ICANN's inaction on 5 issues:

1) In not properly supervising and ensuring that selected Expert candidates of the ICC (i) were appropriately qualified and knowledgeable about core subject matter to correctly apply standards for determining existence of a substantial clearly delineated community invoked which was expressing opposition; (ii) had no direct or indirect conflicts of interest; (iii) were adequately trained and informed to address unique issues presented by Community Objections and gTLD Program including material changes in AGB. The community expected that the ICC would be required to appoint and advise an appropriately qualified "expert," (not just an arbitrator) familiar with the unique needs and requirements presented in the gTLD Program, intellectual property and anti-competitive issues, and the needs and composition of the relevant community (i.e. a music expert for music-themed Objections) (Point 1);

2) In not recognizing the relevance and impact of the exceptional GAC Advice on Community Objection process, and not advising the ICC and Community Objection Experts on effects of new binding contractual material changes in the Program arising from GAC Toronto and Beijing Communique and subsequent GAC Advice: PICs, GAC Category 1 Enhanced Safeguards, Responses to GAC Advice, Board Resolutions, Applicant position Material Changes through their GAC Advice Category 2 Exclusive Access Responses, and revisions to the new gTLD Registry Agreement¹ (the "Material Changes") These addressed GAC Concerns pertaining to exclusive

¹ 3(c) and 3(d) of Specification 11 provided that: (c) Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies. (d) Registry Operator of a "Generic String" TLD may not impose eligibility criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or that person's or entity's "Affiliates" [. . .]. "Generic String" means a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things (New gTLD Registry Agreement, July 2nd, 2013, <https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-02jul13-en.htm#1.d>).

access which were directly related to anti-competitive and enhanced safeguard issues (the “Safeguards”) raised in Community Objections. (Point 2);

3) In not creating an appropriate appeal process for Community Objections and denying parties procedures to protect their fundamental rights and legitimate interests, including preventing conflicts of interest, determinations based on applying contradictory standards and on false facts (Point 3).

4) ICANN (i) giving preferential treatment to .brand Applicants and all Applicants without Safeguards in their current applications. ICANN put in motion a process for Applicants to make material changes to their Applications in the form of PICs² and changes in Specification 13.³ This materially undermines the Legal Rights and Community Objection process, contention set neutrality and Applicant equal treatment, and (ii) giving preferential treatment to the String Confusion Objection process to introduce a review mechanism to address perceived inconsistent Expert Determinations limited to Determinations made on String Confusion objections for .CAR/.CARS and .CAM/.COM.⁴ Perceived inconsistent decisions in Community Objection process were not given same type of treatment (Point 4).

5) With respect to GAC Category 2 Advice Response, ICANN did not verify whether some Applications had exclusive access language. This allowed Applicants (e.g. .music LLC, 1-959-51046 – Annex J) to circumvent the change request requirement initiated by ICANN if objected-to Application (such as in the case of Amazon’s .music, .song and .tunes Applications which have to file change requests) contained exclusive access language if disclosed in Applicants’ GAC Response.⁵ In cases of a clear discrepancy between what the Application states and what the objected-to Applicant provided in their Response, ICANN did not taken any action to ensure that these Applicants are required to submit a change request because the Registry Agreement provides that registry operators of a "generic string" TLD may not impose eligibility criteria for registering

² <http://www.icann.org/en/news/public-comment/base-agreement-05feb13-en.htm>

³ <http://www.icann.org/en/news/public-comment/spec13-06dec13-en.htm>

⁴ <http://www.icann.org/en/news/public-comment/sco-framework-principles-11feb14-en.htm>

⁵ <http://newgtlds.icann.org/en/announcements-and-media/announcement-4-09oct13-en>

names in the TLD that limit registrations exclusively to a single person or entity and/or that person's or entity's "Affiliates" (Section 2.9(c) of Registry Agreement).

4. Date of action/inaction: Determinations were published on February 18th, 2014 (Annex A).

5. On what date did you become aware of action or that action would not be taken?

2/18/2014

6. Describe how you believe you are materially affected by the action or inaction:

ICANN's acceptance of the Expert Determination will allow .MUSIC and .BAND Applicants to proceed to delegation with policies that are unclear and undocumented. The Expert's determination is based on incorrect standards and incorrect information regarding standing of the Objector and the relevance (or in the Expert's determination, the lack thereof) of the GAC Advice. These two critical errors resulted in a flawed decision on Objectors' standing, and allowed the Expert to "avoid" evaluating and determining whether or not the stated Applications created material harm or whether they protected the interests of the affected community. The appropriate standard for standing was applied by other Experts in the case of sensitive strings such as .bank, .insurance, .sport, .sports .bank, .charity and .med (Applications which lacked Safeguards) and against exclusive access registries (such as .polo) with findings of material harm. All these Objections were upheld.⁶ (emphasis added)

DotMusic (".MUSIC") represented Objectors/Related-Objector Entities in Community Objections constituting clearly-delineated community invoked. The Objector American Association of Independent Music ("A2IM") represented its Members (both Labels and Associates), the U.S. Independent label music community and global independent music coalition. These clearly delineated community of established institutions expressing opposition – as evidenced by a public letter to ICANN⁷ by A2IM Coalition - included: Merlin (a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries focusing purely on the interests of the global independent music sector, pg.8), Worldwide Independent Network (representing label

⁶ <http://www.iccwbo.org/products-and-services/arbitration-and-adr/expertise/icann-new-gtld-dispute-resolution/expert-determination/>

⁷ <http://www.icann.org/en/news/correspondence/bengloff-to-crocker-et-al-06mar13-en.pdf>

creators in over 20 countries), Association of Independent Music (representing companies from largest and most respected labels in the world, Pg.6), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe representing 99% of micro, small and medium sized music actors,” Pg.7), who collectively constitute a majority of the independent music community globally invoked (emphasis added) to which strings are explicitly or implicitly targeted. Members of Objector, the International Federation of Arts Councils and Culture Agencies (“IFACCA”), include arts councils and government agencies (ministries of culture) from nearly 70 countries (“Affected Parties”). Both Objectors expressing opposition are clearly delineated and strongly associated with music-themed strings.

On 13th March, 2014, Objections (EXP/462/ICANN/79 (c. EXP/463/ICANN/80, EXP/467/ICANN/84, EXP/470/ICANN/87 EXP/477/ICANN/94), ICC EXP/474/ICANN/91, ICC EXP/459/ICANN/76, ICC EXP/460/ICANN/77) were filed against music-themed Applicants with (i) “open” .music and .band strings without enhanced safeguards to prevent abuse, piracy and protect copyright and intellectual property; or (ii) a discriminatory, anti-competitive exclusive-access registry for .music (the “Objections”) each of which were denied.

As to Point 1 – According to “Selection of Expert Panels” Section 3.4.4 of the new Applicant Guidebook⁸, the Objector(s) relied that the “panel will consist of appropriately qualified experts (emphasis added) appointed to each proceeding by the designated DRSP,” consistent with ICC’s language that “the ICC will constitute a pool of qualified candidates (emphasis added) who can be appointed as experts in the new gTLD proceedings.”⁹

The Determinations (the “Decisions”), demonstrated that Expert had limited on functions of the substantial clearly delineated community invoked and was ill-prepared to understand and address these unique issues by applying correct standards for standing.

The Expert’s qualifications¹⁰ reveal that, while a noted and highly respected expert, he is not an expert on music. None of the Expert’s nearly 50 publicly-listed publications focused on music-related issues or concerns. It also has come to the Objector(s) attention that there have been public

⁸ <http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf>

⁹ <http://www.iccwbo.org/Products-and-Services/Arbitration-and-ADR/Expertise/ICANN-New-gTLD-Dispute-Resolution/Experts/>

¹⁰ <http://www.ucl.ac.uk/laws/academics/profiles/index.shtml?jacob>

comments regarding potential conflicts of interest concerning the Expert and his relationship with Samsung. See e.g. (“U.K judge who issued extreme ruling for Samsung against Apple hired by Samsung”¹¹ and “Conflicts of interest are just classier with English accents”¹²). Further, U.S Government documents reveal Expert worked for Samsung (Annex K) after Panelist ruled in favor of Samsung against Apple in a patent case he was the Judge. Here, Google, an objected-to Applicant, is Samsung’s multi-billion dollar strategic business partner.¹³ Google’s Android has a 79% global market share¹⁴ with Samsung devices dominating 63% of those Android phones.¹⁵ Accordingly, there is a potential appearance of bias (with respect to Google) and ICANN and the ICC accordingly did not retain qualified expert candidates without potential conflicts of interest or those having the relevant experience or expertise to address the unique issues presented by the cases.

Other concerns include, firstly, Expert’s determination that Objectors had no standing in contradiction to AGB. The Expert’s rationale was whether “music” or “band” is a clearly delineated community covering all of mankind. **That is contrary to AGB standards which are whether the community invoked by the Objector(s) is a clearly delineated community (3.5.4)**. Expert’s rationale was also inconsistent with Board Governance Committee’s .CHARITY Re-consideration Decision:¹⁶

The issue is not whether the term “charity” defines a clearly delineated community. The issue, as set forth in the Guidebook, is whether the community invoked by the objector is a clearly delineated community. ...the Panel correctly applied the standards for determining whether the community invoked by the IO was a clearly delineated community. (Determination ¶116, Pg. 2)

Secondly, the Expert agreed with misleading and plainly erroneous statements made by objected-to Applicants **that “GAC Advice was irrelevant” which undermined GAC Advice’s critical relevance to the new gTLD Program despite the Objector(s) Additional Submission** (Annex B). Despite our correspondence, the Expert determined that ICANN did not take “any action” on GAC Advice (despite ICANN agreeing on a process to implement new material binding contractual amendments to “fix” Safeguard issues presented by Objectors) and that GAC Advice was

¹¹ <http://www.fosspatents.com/2013/02/uk-judge-who-issued-extreme-ruling-for.html>

¹² <http://abovethelaw.com/2013/03/conflicts-of-interest-are-just-classier-with-english-accents/>

¹³ <http://www.pocket-lint.com/news/126816-samsung-and-google-sign-big-ten-year-patent-partnership>

¹⁴ <http://www.prnewswire.com/news-releases/strategy-analytics-android-captures-79-percent-share-of-global-smartphone-shipments-in-2013-242563381.html>

¹⁵ <http://www.localytics.com/blog/2013/fonblets-and-phablets-samsung-has-share-of-android-mobile-devices/>

¹⁶ <http://www.icann.org/en/groups/board/governance/reconsideration/14-3/determination-corn-lake-27feb14-en.pdf>, Pg.7

“irrelevant”:

What difference does it make?... Nor has ICANN yet taken any action on the advice. (e.g EXP/462/ICANN/79 Determination, ¶18, Pg. 7)... I accordingly hold that the GAC Advice is irrelevant to what I have to decide (e.g EXP/462/ICANN/79 Determination, ¶20, Pg. 7)

In a letter to GAC,¹⁷ the ICANN reiterated the exceptional relevancy of GAC Advice to the new gTLD Program as a “binding contractual obligation” for Applicants:

By implementing the GAC advice as a contractual obligation in the PIC Specification, the GAC’s advice (as implemented) has the weight of a binding contractual obligation.

As to Point 2: The Community Objection(s) filing pre-dated the Beijing Communique and raised the same concerns set forth by the GAC and subsequently agreed upon by ICANN NGPC Resolutions. After the Community Objection proceedings commenced, GAC and ICANN called into question “open” Applications that lacked enhanced safeguards for sensitive music-themed strings and an Application filed to run a generic music-themed gTLD as exclusive-access registry. This very question was presented by Objector at Objector’s significant expense. **ICANN should have taken appropriate measures to either: a) align the proceedings with GAC Advice and NGPC Resolutions in a consistent manner to accurately reflect new contracting provisions without harming Objector(s) whose concerns were aligned with Advice/Resolutions; b) ensure that the ICC and Experts were appropriately advised on the relevancy of GAC Advice/Resolutions and new AGB material changes in contracting.**

The AGB states that the “receipt of GAC advice will not toll the processing of any application (i.e., an application will not be suspended but will continue through the stages of the application process).” (AGB, Section 3.1). The Objectors did not ask to suspend the processing of the Objections but rather for ICANN to communicate such critical GAC Advice that was exceptional and agreed upon by the NGPC in those cases that such advice imitated both the opinion of GAC and ICANN and Objectors. It would be grossly unfair for ICANN to work towards implementing GAC Advice and new material contracting provisions to “fix” the same concerns expressed by the Objectors (i.e. giving the opportunity for objected-to applicants to submit material change PICs to circumvent Objections after seeing every other competitor’s publicly-available Application to

¹⁷ <http://www.icann.org/en/news/correspondence/crocker-to-dryden-10feb14-en.pdf> , Attachment B, Pg.7

“repair” and “fine-tune” their Application’s lack of safeguards to protect the public interest). As per AGB material changes¹⁸ provisions, it is such new material contractual changes for Applicants would be construed as material changes harming Objectors, 3rd-parties and Community Applicants who already had such safeguards in their Application. If such new amendments are implemented by ICANN as contractual obligations, immediately ICANN is liable for “material changes” harming 3rd-parties and Objectors, especially if those provisions were implemented to protect the public interest from the same concerns that were expressed by the Objectors in Objections that were dismissed (emphasis added). If the objected-to Applications were not going to cause a “likelihood of material” harm then why did ICANN agree to GAC Advice and to implement contractual provisions focusing on preventing the same harms expressed in Objections?

As to Point 3: Expert did not apply the AGB Rules on “standing” and relied on misleading and clearly erroneous statements in his Determinations’ rationale, despite Objector submitting clarifying letters and Additional Submissions to both the ICC and the Expert (Annex B, E, J, L).

AGB states that “established institutions associated with clearly delineated communities are eligible to file a community objection” and that the “community is strongly associated with the applied-for gTLD string” (3.2.2.4). In all cases the Expert agreed that Objectors were both “established institutions”:

To my mind A2IM is, on balance to be regarded as established” and “would be fanciful to hold that A2IM has no recognition whatever outside the U.S (e.g EXP/477/ICANN/94, Determination, ¶28, 9). “IFACCA is an established institution, I need not consider this point further” (e.g EXP/474/ICANN/91, ¶23, 7)

However, the Expert ignored the AGB and applied a contradictory test for standing focusing on whether the term defines a clearly delineated community not the Objectors. The issue, as set forth in the Guidebook, is whether the community invoked by the objector is a clearly delineated community (ICANN Board Governance Board, .CHARITY Re-Consideration). In contrast, the Expert incorrectly focused on the string as a generic word and a general “mankind” community, not the community invoked by the Objectors, creating a standard that can never be met since it is impossible to receive letters of support or opposition from all of “mankind” and use “mankind” as a standard for “strong association”:

¹⁸ <http://newgtlds.icann.org/en/applicants/customer-service/change-requests>

Music appeals to nearly all mankind... Just because there is one word covering all kinds of music does not make all mankind into a “music community” – the word will not stretch that far. There is no cohesion or relationship between all those concerned with creating, performing, recording or “consuming” music of all the different sorts known to man (e.g EXP/477/ICANN/94, ¶29, Pg. 9)

Further, the Expert acknowledged that he did not test whether the community invoked is a clearly delineated community or have an implicit/explicit interest in strings and determines that the only established institution eligible for standing has to “amount to a global music community for all mankind” not the “independent music community” or “ministries of culture governments and arts councils”:

If you took them all (Objector’s invoked clearly delineated community) as being a “community” (which I do not) they could only form a part of the global citizenry (all of mankind) which has an interest of any sort in music”...The Objectors “membership (even taken as a whole) cannot in any way be taken to amount to a global music community for all mankind (e.g EXP/477/ICANN/94, ¶30, P.10)

Also the Expert did not apply the standard for a clearly delineated community invoked by the Objector. In contradiction to the AGB, the Expert applied it in a generic sense:

The same generic word covers all music. But a generic word does not itself evidence anything which can be fairly be called a “community” even in the widest sense of the word. There is no public recognition of a music community locally or globally” (EXP/474/ICANN/91, ¶30, Pg. 9).

The AGB standard for standing is not to determine whether the generic word “band” or “music” is a community. As the Board Governance Committee pointed out in other determinations (e.g .gold and .charity), the test is not to determine whether a term is a community but to determine whether the established institution invoked expressing opposition is a clearly delineated community, is substantial and if it has a strong association with the string regardless whether targeting is direct (explicit) or indirect (implicit) i.e. not the Expert’s incorrect standard used that allowed the Expert to rationalize that “because a group of musicians may be called a “band” does not mean it forms anything which can be fairly be called a “community” of bands (EXP/460/ICANN/77, ¶32, Pg. 11). A “community of bands” is not the standard that must be proven. The Expert repeats this standard incorrectly:

Can all carious disparate types of groups of performers around the world who might fall with the description “band” be described as a community? I think not. Just because a group of musicians may be called a “band” does not mean it forms part of anything which can be fairly called a “community” of bands. (EXP/459/ICANN/76, ¶31, Pg. 9).

On one hand the Expert acknowledges that the “.band string is explicitly or implicitly targeted at

groups of musicians” and that Objector’s “members doubtless have an interest in the bands signed to them” but on the other hand uses the incorrect standard by stating that Objector’s “members are not themselves bands at all” and “that the interest is only indirect” (EXP/460/ICANN/77, ¶33, Pg. 11). The test is not to determine whether members of the established institution are “bands” or “music” or that an “indirect interest” in a “band” or “music” themed-string has no weight (in fact, “implicit” (or indirect) targeting is acceptable under the AGB). The appropriate test is whether the established institution has a strong association with the music-themed strings “band” or “music” regardless whether the targeting is explicit or implicit (emphasis added). According to the AGB, the standard is that the “application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted” (AGB, 3.5.4) i.e. targeting “may be explicitly (directly) or implicitly (indirectly) targeted.” (emphasis added). According to the AGB, the Objectors did not have to prove the incorrect standard assumed by the Expert which was:

It is not proved that there is such a thing as a community of bands or that A2IM is “associated” with any bands, still less with a “clearly delineated community” of bands (EXP/459/ICANN/76, ¶35, Pg. 9).

The Expert disregarded the community invoked by Objectors and applied a test that no established institution can ever meet: “The community is effectively humankind” (EXP/474/ICANN/91, ¶31, 9).

Just as in the case of .sport and .charity, the Board Governance Committee correctly applied the correct standard for standing in the .gold Re-Consideration Request determination:

World Gold Council’s community objection, however, refers to the gold industry in general and not to the gold mining industry in particular.” (Id.) And as stated in the Guidebook, for a Community Objection to be successful, the objector must prove, among other “the community invoked by the objector is a clearly delineated community.” (Guidebook, §3.5.4; see also id. (“The objector must prove that the community expressing opposition can be regarded as a clearly delineated community”) (emphasis added)

Here, Objectors and their memberships and affiliations expressing opposition did not invoke the objection on behalf of the “global music community” or “all of mankind.” The Objectors’ clearly delineated community invoked that was expressing opposition did not describe itself as a being a “community” which was a “part of the global citizenry (all of mankind).” **The expressed opposition was on behalf of the independent music community (A2IM) and a federation of nearly 70 governments’ ministries of culture and arts councils (IFACCA). The clearly delineated membership of independent music community brought forward is the globally**

largest and most influential of its kind e.g. A2IM alone (not including IMPALA, Merlin, WIN, AIM and others which expressed opposition – emphasis added) collected 50% of all the Grammy Awards, the most globally-recognized music awards (Annex H). Furthermore, the clearly delineated “ministries of culture governments and arts councils” invoked also constitute substantial opposition. Both are strongly associated with strings and critical to the global, legal promotion and distribution of music (emphasis added).

Despite agreeing that both Objectors are “established institutions” the Expert refused to find that Objectors act as ”spokesperson[s] for [their] members.” This finding was made despite the Expert acknowledging both Objectors’ Mission Statements (e.g. Objector statements that it “will represent the Independent sector’s interests” (EXP/474/ICANN/79, ¶13, P.4 and P.5), The Expert also questioned the Objectors’ authority to represent members despite acknowledging that Objectors received letters of Objection support from their corresponding Board of Directors, including Objection support from Related-Objectors constituting the community invoked. The Expert also failed to consider evidence that both Objectors publicly and privately alerted their Board and all members in newsletters, even posting Objection details publicly.¹⁹ Not a single member expressed disagreement with Objectors’ actions.

No other Expert in the ICC Community Objection proceedings required letters from individual members of an established institution that was objecting except this Expert:

Although it exhibits letters of support from some of its members, there are none at all from any actual band or its manager (e.g EXP/459/ICANN/76, ¶32, Pg. 9)

Just in the case of Community Priority Evaluation (CPE),²⁰ letters from individuals that are not established institutions have no weight with Community Objections. The AGB has no inference of requesting letters from individual members that were not considered established institutions (emphasis added). We communicated this fact with the ICC and the Panel in writing (before and during the proceedings) and even alerted the Expert that if such letters were material we would provide them (Annex E). The ICC correctly agreed that the Rules did not have any language asking

¹⁹ <http://a2im.org/2013/02/04/call-to-action-please-write-icaan-about-how-music-should-be-administered/> and http://www.a2im.org/downloads/Music_US_Objection_Letter_Template.pdf and <http://www.ifacca.org/announcements/2013/02/27/express-your-view-applications-new-music-domain/>

²⁰ <http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>

Objector Related Entities / individual members to send letters to the Expert (Annex L). In context, ICANN never emails .COM registrants to determine whether Verisign's .COM registry should be renewed.²¹ ICANN itself would fail abysmally to meet such a test: ICANN received less than 50 public comments²² (nearly all from ICANN insiders) out of the 112 million .COM registrants.

The Expert also improperly stated that Objectors did not have sufficient association with their own invoked community and membership and discredited DotMusic's associate membership with IFACCA, including DotMusic's supporting membership:

I conclude that A2IM does not have any sufficient association with the invoked community." (e.g EXP/477/ICANN/94, ¶38, Pg. 11) ...IFACCA can not get its own standing by piggybacking members (EXP/474/ICANN/91,¶25, Pg. 8)

In context, governments that comprise GAC are strongly associated to government Ministries of Culture which are members of IFACCA. In fact, the governments are the same (they just constitute different Ministries within the government). Both the position of IFACCA and GAC on Safeguards are the same with no opposition to such positions. If "government culture ministries" have no standing (or a strong association with music-themed, cultural strings), then GAC should have no standing to object either (This is not true per the AGB).

The Expert also relied on false information for determining "Substantial Opposition":

Only 18 label members wrote supporting letters. They are of course a much smaller proportion of the world indie population and still less of the world record company industry. They do not amount to a significant portion of the community targeted. (EXP/477/ICANN/94, ¶42, Pg. 12).

In contradiction to what Expert alleges, the letters submitted constituted the entire Board of the Objector, not individual members. The letters (Annex C) also represent Objector's Coalition of globally-established institutions representing clearly delineated significant portion of independent music community invoked that is strongly associated with the strings. These established institutions – as evidenced by a letter²³ by the A2IM Coalition sent to ICANN - included Merlin (global rights agency for the independent label sector, representing over 20,000 labels from 39 countries focusing purely on interests of global independent music sector, pg.8), Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing

²¹ <http://www.icann.org/en/about/agreements/registries/com/agreement-01dec12-en.htm>

²² <http://forum.icann.org/lists/com-renewal/>

²³ <http://www.icann.org/en/news/correspondence/bengloff-to-crocker-et-al-06mar13-en.pdf>

largest and most respected labels in the world, Pg.6), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises,” Pg.7).

For the Expert to inconsistently conclude “that the Objector’s members form a very minor proportion of the world’s record companies” (EXP/463/ICANN/80, ¶34, 10) and that such Objections hold no standing or that the community invoked has no relationship to the applied-for string is ill-conceived. The Expert even acknowledged that the Objector has “131 Associate Members, some of whom are large and well-known such as Spotify and iTunes.” (EXP/462/ICANN/79, ¶15, 6) is in contrast to his view that the community invoked is not substantial.” A member such as iTunes Apple iTunes,²⁴ another example of “clear membership” with “formal boundaries, geographic reach and size”²⁵ is substantial. The Objector’s memberships cover a global reach and are strongly associated with strings e.g. iTunes accounts for 63% of global digital music market²⁶ – a majority - with 575 million active global members²⁷ who have downloaded 25 billion songs from iTunes’ catalog of over 26 million songs, available in 119 countries. Other members include Pandora (72.4m active users), Spotify (6m paid subscribers, 24 million active users in 35 countries). A2IM members also include entities associated with global governments, such as France (BureauExport²⁸), China (China Audio Video Association²⁹) and Germany (Initiative Musik).³⁰ These three members alone (together with U.S market) represent substantial music economies and a significant portion of community invoked. In context, in 2012 there were 42,100 employed musicians³¹ in the U.S, a country representing 58% of the global digital music market³² and 27% of global music market share. “Size” and “Substantial Opposition” relates

²⁴ <http://a2im.org/groups/itunes>

²⁵ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

²⁶ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

²⁷ <http://appleinsider.com/articles/13/06/14/apple-now-adding-500000-new-itunes-accounts-per-day>

²⁸ <http://a2im.org/groups/french-music-export-office>

²⁹ <http://a2im.org/groups/china-audio-video-association-cava>

³⁰ <http://a2im.org/groups/initiative-musik-gmbh>

³¹ U.S Department of Labor, <http://www.bls.gov/oes/current/oes272042.htm>

³² <http://www.billboard.com/biz/articles/news/digital-and-mobile/1556590/ifpi-2013-recording-industry-in-numbers-global-revenue>

to “a significant portion of the community³³” invoked – i.e. not entire mankind. AGB states “Substantial” should be taken within “context rather than on absolute numbers.”³⁴ As mentioned in Objections and Additional Submissions (Annex B), Objector is strongly associated with strings and community invoked,³⁵ the Coalition for Online Accountability,³⁶ MusicUnited,³⁷, and affiliates such as MusicFirst,³⁸ Copyright Alliance.³⁹

The Objector’s participation and recognition by the U.S Government as an important advocate for international music trade activities⁴⁰ also counters Expert’s incorrect conclusions and provides further evidence that the Expert did not apply the correct standard and failed to accurately balance factors for standing e.g international “recognition” and “activities that benefit associated community.” The Expert failed to appropriately consider and balance standing factors within context. These included: a “presence of mechanisms for participation in activities, membership and leadership” (Both Objectors had strict, clear membership and a formal Board of Directors with voting rights), “an institutional purpose related to the benefit of the associated community” (Both Objectors had a public and clear Mission Statement and Purpose), “performance of regular activities that benefit the associated community” (Both Objectors had international activities and events benefitting members) and “level of formal boundaries around the community” (Both Objectors required members to formally apply to become members with eligibility requirements to be closely associated with the clearly delineated community invoked and pay annual membership to remain a member). As an additional point, the significance and applicability of “formal boundaries” was rejected. It is known that formal boundaries are in place to facilitate a delineated process in which rights holders are compensated and to eliminate piracy and copyright infringement e.g. Objector member iTunes formally requires hundreds of millions of music fans to create formal Apple accounts and abide to strict terms of service to consume music and to ensure that royalties are paid

³³ <https://community.icann.org/display/newgtldrg/community+objection+grounds>

³⁴ <http://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>, Module 4-11

³⁵ <http://forum.icann.org/lists/comments-gac-safeguard-advice-23apr13/pdfJAXI5xkyLm.pdf>

³⁶ http://www.onlineaccountability.net/pdf/2012_Mar06_ICANN_EnhancedSafeguards.PDF

³⁷ http://www.musicunited.org/1_whocares.aspx

³⁸ musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, recording artists, managers, music businesses, performance right advocates. <http://musicfirstcoalition.org/coalition>

³⁹ <http://www.copyrightalliance.org/members>

⁴⁰ U.S Government International Trade Commission, <http://www.usitc.gov/publications/332/pub4393.pdf>, 3-9 and C-3, <http://www.usitc.gov/search-ui/search/C.view=default/results?s=&sa=0&hf=20&q=A2IM>, May 2013

using clearly delineated, organized systems that identify rights-holders corresponding to each song sold or streamed (Annex F, G, I). In fact, the Expert denies such delineated structured systems such as the ISMN, ISRC, ISWC, ISNO and other systems used to classify music and compensate rights holders (EXP/474/ICANN/91, ¶29, P.9) claiming that “this cloud of words does not convey anything which can be fairly be described as a clearly delineated community” (EXP/474/ICANN/91, ¶30, P.9). If such a clearly delineated community invoked does not exist then the Expert failed to explain how the community’s invoked rights holders get paid from royalties, such as statutory or performance royalties determined by governments and enforced by law. Without formal boundaries and Safeguards, the strictly delineated compensation system that exists would be compromised in favor of piracy and abuse which already is rampant.

The Expert contends that in regard to Objections, “if the fear was really well founded the entire world record industry would be up in arms... The absence of a universal clamour makes it clear to me that the record industry as a whole does not fear material detriment.” (EXP/477/ICANN/94, ¶44, Pg. 12). Again, the Expert ignored the overwhelming evidence presented by the Objector with respect to the invoked community’s fears of piracy, anti-competitive issues and abuse for music-themed gTLDs. Globally-recognized, highly-credible associations strongly associated with strings (and others) voiced serious concerns of the high likelihood of material harm without Safeguards. These included public comments⁴¹ by the Coalition of Online Accountability (included A2IM),⁴² the Copyright Alliance (included A2IM),⁴³ Austrian Music Industry Association,⁴⁴ International Publishers Association,⁴⁵ BREIN Copyright Industry Groups,⁴⁶ as well as ICANN’s Business Constituency⁴⁷ and Intellectual Property Constituency⁴⁸ and many others. **These substantial public comments by A2IM and others mirrored the concerns made by the banking industry whose Objection was upheld against Radix (whose .bank application was**

⁴¹ <http://forum.icann.org/lists/comments-gac-safeguard-advice-23apr13/>

⁴² <http://forum.icann.org/lists/comments-gac-safeguard-advice-23apr13/pdfykwkBgd8BS.pdf>

⁴³ <http://forum.icann.org/lists/comments-gac-safeguard-advice-23apr13/pdfZAxvKEQJa.pdf>

⁴⁴ <http://forum.icann.org/lists/comments-gac-safeguard-advice-23apr13/pdfqbAFJIXCE4.pdf>

⁴⁵ <http://forum.icann.org/lists/comments-gac-safeguard-advice-23apr13/binYYWrklmmsT.bin>

⁴⁶ <http://forum.icann.org/lists/comments-gac-safeguard-advice-23apr13/msg00093.html>

⁴⁷ <http://forum.icann.org/lists/comments-gac-safeguard-advice-23apr13/pdfmAs6qFAMCk.pdf>

⁴⁸ <http://forum.icann.org/lists/comments-gac-safeguard-advice-23apr13/pdfzg5FzsaA92.pdf>

nearly identical to their .music objected-to application) citing their lack experience and lack of existing relationships in a highly complex regulatory environment:

[H]ighly likely to result in inadvertent non-compliance with bank regulatory measures, in delays in obtaining regulatory consents, in difficulties resolving overlapping requirements imposed by a multiplicity of regulators and policymakers, and in significant concerns on the part of regulatory authorities over the possibility of fraud, consumer abuse, tax evasion and money laundering, other financial crimes and improper avoidance of regulatory measures by means of the Internet. (DotSecure Determination, ¶163, 32)

There the Expert that upheld the .bank Objection noted that concerns were highlighted by bank regulatory authorities in their public comments to ICANN – just as in the case of the community invoked expressing identical concerns for music-themed sensitive strings (emphasis added).

Similarly, an Objection was upheld against Famous Four’s .sport (whose .sport application was nearly identical to their .music objected-to application). Even though the Expert asserted that some detriments alleged by Objector SportAccord were “purely hypothetical”, the Expert concluded that there was a “strong likelihood of material detriment to the rights or legitimate interests of the Sport Community if the application ... is allowed to proceed” and that Objector “proved several links between potential detriments” that the community may suffer and the operation of the .SPORTS string (dot Sport Determination, Pg. 24, ¶163 and Pg. 23, ¶¶157-58). These were exactly the types of detriments that were also presented to ICANN in public comments in a Letter⁴⁹ by .MUSIC, a community-led effort strongly associated with music-themed strings. Another public Letter⁵⁰ was posted on the issues of abuse, piracy and Safeguards for sensitive-music themed strings relating to open and closed strings. The Institute for Policy Innovation assessed the annual harm by piracy at \$12.5 billion, 70,000 lost jobs and \$2 billion in lost wages.⁵¹ Since Napster emerged in 1999, U.S music sales dropped 53% from \$14.6 billion to \$7.0 billion in 2011. From 2004-2009, approximately 30 billion songs were illegally downloaded. NPD reported only 37% of music acquired in 2009 was

⁴⁹ <http://forum.icann.org/lists/comments-gac-safeguard-advice-23apr13/pdfIFFGLfAK6c.pdf>

⁵⁰ <http://music.us/open-music-themed-sensitive-gtld-harm-without-safeguards.pdf>

⁵¹ http://www.ipi.org/ipi/IPIPublications_nsf/f726f4998ba46f86862567d80074727a/d95dcb90f513f7d78625733e005246fa?OpenDocument

paid for.⁵² Theft on this scale has a devastating impact,⁵³ diminishing the ability to bring the next generation of artists to the marketplace and dwindling the incentive for aspiring artists to make music a career.⁵⁴ In 2010, Harris Interactive found that 23% of consumers regularly download music illegally using Google, highlighting the problem's grand scale. In 2011, Ipsos indicated that 54% of users of unauthorized downloads said they found music through search engines. Popular music searches and sites for which Google had received more than 1,000 copyright complaints were "almost 8 times more likely to appear in the top 10 search results than a well-known, authorized music download site."⁵⁵

As such harms are commonly known, other Experts upheld Objections to "open" applicants relating to sensitive strings (these included .insurance, .charity, .med, .sport, .sports and bank) against all the same objected-to Applicants for music-themed strings. It is reasonable to conclude that if Objectors met standing (through application of the appropriate standard) that material harm pertaining "open" music-themed sensitive strings would also be upheld in the instant music related cases. However, because standing was not determined, Expert did not assess "material harm" and concerns of community invoked were not heard.

The Expert also introduces a new test to require an Objector to evaluate and compare other gTLD Applications and contention "rivalries" which are not part of an Objection dispute since the Community Objection process is not a "beauty contest" to compare Applications. The Expert also made false speculations that the purpose of the Objection is to eliminate a rival applicant:

"DotMusic" appears to be the general name of this rival. Its moving spirit is Mr Constantinos Roussos, named as the Objector's representative in this case. Such support would include eliminating a rival applicant (EXP/474/ICANN/91, ¶19, Pg. 6)

The Objector's representatives (or any rival Applications) are irrelevant to each objected-to case, but the Expert created a new test seeming to require the Objector to compare and comment on

⁵² http://www.riaa.com/physicalpiracy.php?content_selector=piracy-online-scope-of-the-problem

⁵³ http://www.riaa.com/blog.php?content_selector=riaa-news-blog&blog_selector=Nobody+Stole+Pie&news_month_filter=3&news_year_filter=2010&searchterms=nobody%20stole%20pie&terminclude=&termexact=

⁵⁴ http://www.riaa.com/blog.php?content_selector=riaa-news-blog&blog_selector=Illegal%20Downloading+Fewer%20Musicians&news_month_filter=7&news_year_filter=2010

⁵⁵ http://riaa.com/blog.php?content_selector=riaa-news-blog&content_selector=riaa-news-blog&blog_selector=Googles-Move-&news_month_filter=2&news_year_filter=2013

differences between Applications to justify the high likelihood material harm:

The Objector cannot be heard to say that any .music gTLD will cause material harm for it does not object to Mr Roussos' application. Its position in logic must be that his application would cause no detriment but this would. That it has not tried to do (EXP/462/ICANN/79, ¶42, 11)

In fact, the Objectors clearly articulated the material detriment in each corresponding case relating to Safeguards. The Expert failed to grasp the dangers of “open” strings and falsely concludes that “no doubt ICANN will have remedies” if there are violations (EXP/462/ICANN/79, ¶44, Pg. 12) when in fact ICANN is not a “copyright” enforcer and none of ICANN’s policies in the new gTLD Program directly tackle copyright, the DMCA, EDEC and piracy⁵⁶ which negatively affects clearly delineated community invoked.

More worrisome is the Expert calling the Google Transparency Reports (e.g 80 million copyright infringement URL removals from just 2 organizations the RIAA and BPI last year⁵⁷) on mass copyright infringement⁵⁸ and studies conducted by McAfee, Namesentry, Verisign and Symantec (which overwhelmingly prove that open gTLDs are significantly riskier than restricted gTLDs) “irrelevant”:

I fail to see what these general reports have to do with the proposed string. They are not concerned with it – their concern is much more general – about open or closed strings... I therefore hold that these reports are irrelevant (EXP/460/ICANN/77, ¶26 and ¶27, Pg. 10).

This is where the Panel fails to understand the entire premise of these Objections: the underlying concern is about open and closed strings and showing evidence of the likelihood of material detriment against the community invoked if open and closed strings were allowed to proceed. The evidence is overwhelming pertaining to the likelihood of material harm for sensitive strings under an “open” gTLD system, especially in a regulated market which involves copyright. Other examples proving likelihood of harm caused by “open” systems without Safeguards is Android’s open system. Google Android’s open app ecosystem “does not have a strict process to block pirated or malicious

⁵⁶ Music Coalition letter to ICANN, <http://forum.icann.org/lists/comments-gac-safeguard-advice-23apr13/msg00092.html> (<http://forum.icann.org/lists/comments-gac-safeguard-advice-23apr13/pdfJAX15xkyLm.pdf>)

⁵⁷ <https://www.google.com/transparencyreport/removals/copyright/owners/?r=last-year>

⁵⁸ http://www.riaa.com/blog.php?content_selector=riaa-news-blog&blog_selector=clear-facts-&blog_type=&news_month_filter=5&news_year_filter=2012

applications⁵⁹ – analogous to objected-to Applicants “open” policies, making it highly vulnerable to abuse.”⁶⁰ Google’s open platform stats reveal that: (i) 72% of all its apps access at least one high-risk permission,⁶¹ (ii) Malware increased by 580% between 2011 to 2012 with over 175,000,000 downloads deemed “High Risk,”⁶² (iii) Kaspersky Lab: 99% of mobile malicious programs target Google Play’s open platform.⁶³ In antithesis, Apple App Store has a stricter and more restrictive approval process which is safer and less vulnerable to abuse.⁶⁴

Also, in many instances the Expert relied on false or misleading information that was clearly not verify for accuracy. For example, in conclusions, the Expert determined that A2IM – the Objector that Constantinos Roussos represented in Objections – is a supporter of DotMusic, which is untrue. The Expert’s final conclusion Points (¶37, ¶38 and ¶39) pertaining to “detriment” were also based on errors and false facts that were not verified:

“...the Objection itself is not to .band in principle (rather, A2IM is supporting Mr Roussos’s application for .band)”(EXP/459/ICANN/76, ¶38, P.10) ...At the very least, since it supports Mr Roussos’ application for .band, the Objector should have demonstrated how that Application would not cause detriment but this one would” (emphasis added).” (EXP/459/ICANN/76, ¶39, P.10)

These Expert statements prove the Expert lacked appropriate training for this particular process. Such material error include the fact that Roussos did not apply for .band. Moreover this point would not be relevant for the “material detriment” test. It can be verified⁶⁵ that Whatbox (Red Triangle) and Donuts (Auburn Hollow) were the only Applicants for .band. Furthermore, A2IM did not support any .band Application and did not support an Application by Roussos. Determinations decided on the basis of false information or/and incorrect AGB procedures and tests hold absolutely no ground to be upheld and must be dismissed by the BGC. The unintended consequences of allowing false information to determine cases puts in question ICANN’s own credibility and Bylaws.

As to Point 3: lack of an appeal process for Community Objections thereby denying parties

⁵⁹ www.juniper.net/us/en/local/pdf/additional-resources/jnpr-2011-mobile-threats-report.pdf

⁶⁰ <http://www.pcmag.com/article2/0,2817,2396558,00.asp>

⁶¹ <https://www.bit9.com/download/reports/Pausing-Google-Play-October2012.pdf>

⁶² http://blog.trustgo.com/image/2012/10/trustgo_halloween_spotlight.pdf

⁶³ http://www.securelist.com/en/analysis/204792255/Kaspersky_Security_Bulletin_2012_The_overall_statistics_for_2012#1

⁶⁴ <http://www.wired.com/business/2012/12/ios-vs-android/>

⁶⁵ <https://gtldresult.icann.org/application-result/applicationstatus/viewstatus>

procedures to protect their fundamental rights. The failure of the Board to address a chorus of voices that called for an appeal mechanism to allow appropriate review of cases has prejudiced Objector's ability to protect their members' fundamental and legitimate rights. ICANN's lack of action forced the parties to: a) bear significant expense; b) detrimentally rely on ICANN's stated policies and procedures for Community Objections; c) led to a breach of process; d) has resulted in process in which Applicants will be able to materially change their positions (e.g. from an exclusive access registry to an open registry or adding PICs not in their current Applications); and e) resulted in the selection and appointment of an expert that was not prepared to address the unique issues presented.

As a result of the Decisions, the Affected Parties suffered direct financial harm in order to prepare and file the Objections. The Affected Parties will also suffer financial harm, and the Objectors' community invoked will be negatively affected should the objected-Applicants be ultimately be awarded these music-themed gTLDs.

7. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.

Other groups adversely affected by the inaction are community applicants who have serious concerns about the unintended consequences and precedents created in the new gTLD Program in relation to material changes⁶⁶ which are inconsistent to the AGB. Such Material Changes by Applicants (through PICs and other Safeguards) have no consequences or accountability mechanisms to protect community applicants in a contention set. In context, Community Applications already abide to the Registry Dispute Resolution Procedure (RRDRP) accountability mechanism.⁶⁷ Community Applicants also have appropriate restrictions, including policies relating to Eligibility, Name Selection, Content/Use, and Enforcement as community safeguards.

Changes of position occurring during Community Objection proceedings not found in current Applications indicates procedural flaws of Community Objection process and also vindicate Community Objectors' positions. ICANN has even took this issue a step further by revising the new

⁶⁶ <http://newgtlds.icann.org/en/applicants/customer-service/change-requests>

⁶⁷ <http://www.icann.org/en/news/public-comment/rrdrp-15feb10-en.htm>

gTLD Registry Agreement during Objection proceedings with language vindicating Objectors views. According to the AGB, any information that is deemed "false or misleading may result in denial of the application."

Such Material Changes significantly change an Applicant's business model and other critical components in their Application, such as financial statements and their Letter of Credit. Under the ICANN AGB rules such material "changes" will likely "involve additional fees or evaluation in a subsequent application round." As such, the existing new gTLD process has lost meaning since any Applicant is now allowed to "shift" their position without accountability of any sort or ICANN action to prevent such violations. As such, many Objectors were materially harmed by Determinations since Experts lacked fundamental knowledge of community functions. Also Determinations based on false facts and relying on contradictory AGB standards for standing might harm Community Applicants in CPE.

8. Detail of Board or Staff Action – Required Information

On June 19th 2013, a letter was sent to ICANN and the Board which raised serious concerns that "the ICC has not identified expert Panelists that have expertise in music - the relevant subject matter of interest for the communities." On June 24th, 2013 ICANN responded stating that "for the matter of the expertise of the panel members...Section 3.4.4 of the Applicant Guidebook" states:

3.4.4 Selection of Expert Panels - A panel will consist of appropriately qualified experts appointed to each proceeding by the designated DRSP. Experts must be independent of the parties to a dispute resolution proceeding. Each DRSP will follow its adopted procedures for requiring such independence; including procedures for challenging and replacing an expert for lack of independence

ICANN further stated in their response that "ICANN has confidence that the ICC has followed the requirements as expressed by the AGB and has appointed experienced jurists with appropriate qualifications in mediation/arbitration to preside over objection proceedings."

However, ICANN's response that the "appropriate qualifications" of an expert is in "mediation/arbitration" is not mentioned in the AGB. The definition of "expert" is "a person who

has a comprehensive and authoritative knowledge of or skill in a particular area.⁶⁸ Objectors reasonably relied that experts would be “appropriately qualified experts” pertaining to Applications determined and have “comprehensive and authoritative knowledge” in that “particular area.”

ICANN solicited Responses from Applicants for the strings identified by GAC Advice whether they planned to operate strings as exclusive access registries (defined as a registry restricted to a single person or entity and/or that person's or entity's Affiliates" (2.9c of Registry Agreement).

.MUSIC (DotMusic) sent written correspondence to ICANN, the ICC and Expert on Material Changes and process issues relating to Community Objections that ultimately created harm to Objectors, 3rd-parties and Community Applicants (Annex J). The Expert – despite correspondence – failed to investigate the material detriment issues of exclusive access that were presented in cases and did not give standing in any Determination (e.g EXP/474/ICANN/91). Pertinent “material detriment” issues were never heard. ICANN did not act in accordance to its ByLaws and has put in motion new processes to “fix” objected-to Applicants’ Safeguards without any accountability at the expense of Objectors and 3rd-parties. ICANN also did not invite .music LLC to submit a change request (as it did with Amazon) despite its current Application’s exclusive access language (e.g having a “sole registry” and only allowing Accredited Associations formed before 2007 (“Affiliates”)) to offer .music to members (i.e. excluding members of legitimate organizations formed after 2007 or non-“Accredited” Affiliates (Annex J).

Both the ICANN Board and the NGPC responded to the GAC Advice and called for public comment and input regarding “closed generic” Category 2 Applications and took action to materially change how such gTLDs are to be operated and allowed Applicants to intentionally materially change their Applications, in some cases from an exclusive access registry to a non-exclusive registry. During the proceedings ICANN put in motion a process which would ultimately allow Material Changes to Applications in the form of new binding contractual amendments. During this process ICANN failed to respond to Objector’s stated concerns about the effect of GAC Advice on the proceedings and failed to advise the ICC and Expert to consistently align itself with both GAC Advice and NGPC Resolutions.

⁶⁸ Oxford Dictionary, http://www.oxforddictionaries.com/us/definition/american_english/expert

The Affected Parties believe that there was inaction by ICANN:

- 1) in failing to adequately train, advise, and instruct the ICC, thus allowing the ICC to appoint an expert who was unqualified to address the specific issues related to community invoked, its composition, strict delineation and host of intellectual property DNS issues e.g piracy;
- 2) by refusing to present to ICC and Expert, GAC-related issues and new NGPC Resolutions: Responses to GAC Advice, PICs, Board Resolutions, Changes in Applicant positions through the GAC Advice Category 2: Exclusive Access Response Form for Applicants, and revisions to Registry Agreement that addressed GAC Advice allowed the Objection to proceed without consideration of the effect and importance of these exceptional developments that occurred after the Objections were filed;
- 3) by allowing a process to facilitate modifications and material changes to Applications as PICs, or, in response to GAC Advice on Category Exclusive Access Applications, permitted Applicant's to fundamentally change positions during proceedings without ramifications to detriment of Objector;
- 4) in creating a process by which exceptional modifications and material changes to Applications in response to GAC Advice can be facilitated. Failing to address the effect of such actions to ongoing Objections violated Article 4 of the Articles of Incorporation and Article 1, Section 2, 7, 8, and 9 of the ICANN Bylaws resulting in a breach of process and calls into question the legitimacy of the Program; and
- 5) by failing to offer an appropriate appeal mechanism to address clear procedural issues and AGB violations pertaining to Objections especially in cases of unqualified panels using factually incorrect and inconsistent statements and applying contradictory standards.
- 6) by harming applicants in a contention set as well as Community and Legal Rights Objectors against objected-to .music Applicants who relied on the AGB's language.
- 7) in failing to ensure there were no conflicts of interest and bias in panels relating to the new gTLD Objection process as whole. This compromises the credibility of the new gTLD program and sheds light on how Objections were mishandled by ICANN without any accountability on the selection of panels even if there was a clear conflict of interest. Whether Expert signed a statement

of independence and disclosed it to the ICC does not prove there was no conflict of interest or inherent bias from the Expert.

9. What are you asking ICANN to do now?

1) Reimburse or order the ICC to reimburse the Objector for all of its expenses, including but not limited to attorney fees, administrative expenses and Expert fees associated with cases: ICC EXP/462/ICANN/79 (c. EXP/463/ICANN/80, EXP/467/ICANN/84, EXP/470/ICANN/87 EXP/477/ICANN/94), ICC EXP/474/ICANN/91, ICC EXP/459/ICANN/76, ICC EXP/460/ICANN/77;

2) Allow new Community Objections be filed for these cases with appropriate music Expert;

3) Determine that objected-to .music LLC's GAC Responses (that they do not intend to be exclusive access registry) be deemed material and inconsistent with their position in Community Objection Responses and policies in their current Application and initiate a change request for Applicant 1-959-51046 to reflect such material changes pertaining to removing exclusive access language (Annex J) since it violates the AGB (1.2.7) stating that at any time during the evaluation process information previously submitted becomes untrue or inaccurate, the applicant must notify ICANN of such changes. As evidenced in Annex J, information provided was misleading. According to ICANN "Failure to notify ICANN of any change in circumstances that would render any information provided in the application false or misleading may result in denial of the application."⁶⁹

4) Allow for a Reconsideration of the Decisions by an appropriate and qualified expert and with instruction regarding the GAC Advice and changes made by Applicants.

10. Please state specifically grounds under which you have standing and right to assert this Request for Reconsideration, and the grounds or justifications that support your request.

DotMusic Limited (.MUSIC) is community Applicant for .music and Objector Representative. All Applicants and Objector(s)/Related-Objector Entities are entitled to a fair and appropriate evaluation of procedures. .MUSIC (as a community applicant) could be adversely

⁶⁹ <http://newgtlds.icann.org/en/applicants/customer-service/change-requests>

affected in CPE by Determinations (which relied on contradictory standards and false information). If CPE fails, .MUSIC will be subject to expensive auctions which - as agreed upon by the EU⁷⁰ - were designed to favor deep pocketed Applicants – such as Amazon and Google.

Breach of Fundamental Fairness: Basic principles of due process to proceeding were violated and lacked accountability by ICANN, ICC and Expert despite the excessive costs and resources attributed to filing.

Failure to Consider Evidence: Expert failed to consider relevant evidence relating to: (i) Material Changes and Safeguards; (ii) Standing of Objector as a clearly, delineated community invoked expressing opposition; (iii) Substantial size/ global breadth of Objectors/Related Entities and strong association with music-themed strings;

Violation of ICANN Articles of Incorporation: Article 4 calls ICANN to operate for the benefit of Internet community as a whole, carrying out activities in conformity with relevant principles of international law and applicable international conventions and local law, and to the extent appropriate and consistent with its Articles and Bylaws, through open and transparent processes that enable *competition and open entry in Internet related markets*. ICANN should have properly communicated and delegated functions to the ICC but failed to do so in violation of ByLaws Art. 1, Section 2, 3: *To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.* (ByLaws Art. 1, Section 2, 7 *Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process;* ByLaws Art. 1, Section 2, 8 *Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.*

11. Are you bringing this Reconsideration Request on behalf of multiple persons/entities? Yes

11a. If yes, Is the causal connection between the circumstances of the Reconsideration Request

⁷⁰ <http://forum.icann.org/lists/comments-new-gtld-auction-rules-16dec13/msg00016.html>

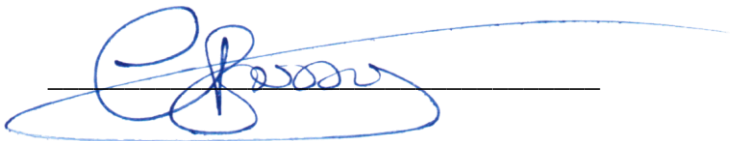
and the harm the same for all of the complaining parties?

The clearly delineated community invoked (i) has a shared, common interest - the legal distribution and promotion of music, (ii) is dependent on DNS (where rampant piracy occurs – Annex F, I) for core activities, and (iii) Determinations of such significance pertaining to enhanced safeguards, competition and exclusive access can create material detriment to legitimate interests of significant portion of the community invoked. Failure of Expert to understand such issues exhibits why these cases require a music expert.

Do you have any documents you want to provide to ICANN? Yes, see Annexes A-L

Terms and Conditions for Submission of Reconsideration Requests:

The Board Governance Committee has the ability to consolidate the consideration of Reconsideration Requests if the issues stated within are sufficiently similar. The Board Governance Committee may dismiss Reconsideration Requests that are querulous or vexatious. Hearings are not required in the Reconsideration Process, however Requestors may request a hearing. The BGC retains the absolute discretion to determine whether a hearing is appropriate, and to call people before it for a hearing. The BGC may take a decision on reconsideration of requests relating to staff action/inaction without reference to the full ICANN Board. Whether recommendations will issue to the ICANN Board is within the discretion of the BGC. The ICANN Board of Director’s decision on the BGC’s reconsideration recommendation is final and not subject to a reconsideration request.



Constantinos Roussos - .MUSIC (DotMusic)

Date: March 4th, 2014