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April 27<sup>th</sup>, 2015

ICANN Board Governance Committee (BGC);  
Mr. Chris Disspain, ICANN BGC Chairman; and  
ICANN Board & Staff

**Re: Response to .Music LLC Reconsideration Request No. 15-6**

Dear Chairman Disspain, Board Governance Committee (BGC) Members and ICANN:

On behalf of DotMusic Limited (hereinafter “DotMusic”), please accept this formal response to the allegations levied against DotMusic and ICANN by .Music LLC (“Far Further”) in a Reconsideration Request 15-6 dated April 17, 2015.<sup>1</sup> This Reconsideration concerns DotMusic’s Public Interest Commitments (PIC) and mischaracterizes the filings and ICANN’s position to date.

**A) ICANN staff did not violate any ICANN policy or procedure**

The Far Further Reconsideration states in pertinent part that:

*[DotMusic’s]Change Request is ostensibly a PIC Spec 11 submission, but is actually more than 300 pages of “clarifications” about the application’s community definition and policies. This is in direct violation of an ICANN “Applicant Advisory” published on 30 September 2014.*

DotMusic agrees with ICANN’s response to .Music LLC that:

*DotMusic Limited is not seeking to make any changes to its application material, which is the subject of the EIU’s CPE evaluation... As you are aware, during its evaluation, the EIU may take into consideration any publicly available information.”<sup>2</sup>*

The Community Definition and Registration Policies of DotMusic’s Application<sup>3</sup> remain the same as filed. DotMusic has not filed a change request for Question 20(a)(b)(c)(d)(e) to change

<sup>1</sup> .Music LLC Reconsideration Request 15-6, <https://www.icann.org/en/system/files/files/reconsideration-request-15-6-music-redacted-17apr15-en.pdf>, Appendix: <https://www.icann.org/en/system/files/correspondence/willet-to-styll-27may14-en.pdf>

<sup>2</sup> .Music LLC Reconsideration Request 15-6, <https://www.icann.org/en/system/files/files/reconsideration-request-15-6-music-redacted-17apr15-en.pdf>, Pg.5



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its Community Definition or any of its Registration Policies. Accordingly, Far Further's reconsideration should be flatly rejected.

On the other hand though, Far Further filed a change request to Question 20(a)(b)(c)(d)(e). On May 27, 2014, given the material nature of such a change request, ICANN deferred the change request to be submitted after Far Further's application's CPE.<sup>4</sup> Such changes to the Community Definition and Registration Policies are material changes.

Far Further claims that their "*Change Request met the parameters for Change Requests at the time*" but this is not consistent with ICANN's Change Request policies that predated the new Change Request Advisory. Far Further's change request does not comply with the prior ICANN Change Request page,<sup>5</sup> which required specific criteria to be fulfilled, such as:

***Materiality** – Would the change affect the evaluation score or require re-evaluation of some or all of the application? Would the change affect string contention or community priority consideration?*

Clearly, any change that Far Further submitted to Question 20(a)(b)(c)(d)(e) does not pass ICANN's prior Change Request page criteria with regards to *Materiality* and other criteria.

## **B) DotMusic's Community Definition & Registration Policies Remain Unchanged in its Application**

DotMusic would like to align itself with ICANN staff's position and re-affirm that the Community Definition and Registration Policies stated in its Application remain unchanged.<sup>6</sup> Please note the following definitions and policies set forth in DotMusic's Application:

### **Community Definition (Community Establishment/Nexus):**

DotMusic commits not to exclude legitimate members of the global Music Community as defined in the Application -- "*a strictly delineated and organized community of individuals,*

<sup>3</sup> <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadapplication/1392?t:ac=1392>

<sup>4</sup> <https://www.icann.org/en/system/files/correspondence/willet-to-styll-27may14-en.pdf>

<sup>5</sup> Archive.org, ICANN Change Request page, July 14<sup>th</sup>, 2013  
<https://web.archive.org/web/20130714023142/http://newgtlds.icann.org/en/applicants/customer-service/change-requests>

<sup>6</sup> <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>, DotMusic Application ID 1-1115-14110



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*organizations and business, a logical alliance of communities of similar nature that relate to music.*” (Community Definition, Application Answer to Question 20a).

## Registration Policies:

### Eligibility

According to the DotMusic Application:

*DotMusic will use clear, organized, consistent and interrelated criteria to demonstrate Community Establishment beyond reasonable doubt and incorporate safeguards in membership criteria “aligned with the community-based Purpose” and mitigate anti-trust and privacy concerns by protecting the Community of considerable size and extension while ensuring there is no material detriment to Community rights and their legitimate interests. Registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership” without discrimination, conflict of interest or “likelihood of material detriment to the rights and legitimate interests” of the Community. (Application Answer to Question 20a)*

According to the DotMusic Application:

### *SUNRISE LAUNCH W/ TRADEMARK VALIDATION*

*This is the first phase of .MUSIC domain registration. It is a phase designed to protect trademarks in the roll-out of .MUSIC. The Sunrise is the time when regional, national and international trademark and service mark holders can apply for .MUSIC domains.*

*The eligibility requirements will be verified, and multiple registration applications for the same string will be auctioned, except for GPML entries that supersede any other sunrise registration applications. The Sunrise Challenge Process solves disputes concerning domains registered under the Sunrise Policy.*

### *MUSIC COMMUNITY MEMBER ORGANIZATION (MCMO) LANDRUSH LAUNCH*

*This is the second phase of .MUSIC domain registration. It is a limited-time period reserved for members of DotMusic-accredited music Community Member Organizations (MCMO). Unique registrations will be granted to the sole*



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*registrant and delegated at the close of the time period; multiple registration requests for the same string will go through an auction.*

#### *LANDRUSH LAUNCH*

*This is the third phase of .MUSIC domain registration; a limited- time period. Unique registrations will be granted to the registrant; multiple registration requests for the same domain will go through an auction. Landrush is designed for members of the Music Community that want to secure premium .MUSIC domains giving members the chance to register their preferred .MUSIC domains; multiple registration requests for the same domain will go through an auction.*

#### *GENERAL AVAILABILITY*

*This is the fourth and final phase of registration of .MUSIC domains. .MUSIC registrations will now be available to Music Community members on a first come, first served basis. (Application Answer to Question 20e)*

#### Name Selection

According to the DotMusic Application:

*Names Selection Policy – to ensure only music-related names are registered as domains under .MUSIC, with the following restrictions:*

- 1) A name of (entire or portion of) the musician, band, company, organization, e.g. the registrants “doing business as” name*
- 2) An acronym representing the registrant*
- 3) A name that recognizes or generally describes the registrant, or*
- 4) A name related to the mission or activities of the registrant (Application Answer to Question 20e)*

Furthermore, DotMusic’s Policies state that a registrant can:

*“not register a domain containing an established music brand’s name in bad faith that might be deemed confusing to Internet users and the Music Community” (Application Answer to Question 20e)*

Also DotMusic’s Policies reiterate that the:

*“Globally Protected Marks List (GPML) will ensure major music brands and established artists, such as RIAA-certified platinum-selling bands, are protected*



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*not cybersquatted. These are reserved at all times.” (Application Answer to Question 20e)*

### Content & Use:

According to the DotMusic Application:

*The .MUSIC Use policy, enhanced safeguards and Premium Channels will benefit registrants, IP rights holders and their music-related content and will help them achieve higher search engine rankings that would replace fraudulent sites that provide free or otherwise illegal music. As a result musicians, creators and other rights holders will enjoy more visibility and an additional income stream that otherwise was provided to illegal sites. This way .MUSIC can reduce the costs and expenses imposed upon the Music Community to fight piracy. (Answer 18c)*

*.MUSIC will effectively differentiate itself by addressing the key online usage issues of safety, trust, consistency, brand recognition as well as communicate a website's content subject-matter: music-related content. (Answer 20c)*

*Directly communicating that the content is music-related and representing the Community in a positive and beneficial manner consistent with the .MUSIC Purpose and Use policy (Application Answer to Question 20d)*

*Creating music-related intangible inputs that add economic and social value. Connecting music-related content in a meaningful and organized manner that will benefit both the Community and Internet users. (Answer 20d)*

*Use only for music-related activities (Application Answer to Question 20e)*

*PARKING PAGES: DotMusic will prohibit the use of parked pages. .MUSIC sites will be subject to the content and use restrictions described in response to question 18b and question 20e. Parked sites can only be used as temporary pages assigned to a domain at the time of registration and stay in place until the registrant has a website developed and ready to go live in a reasonable time period (Application Answer to Question 18c iii)*

Furthermore, DotMusic requires that the music content on .music sites is licensed or owned by the registrant.



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*Respect the intellectual property rights of others by posting or submitting only content that is owned, licensed, or otherwise have the right to post or submit.*  
(Application Answer to Question 20e)

Enforcement:

According to the DotMusic Application:

*Compliance & Enforcement: DotMusic will take proactive and reactive measures to enforce its Policies. Proactive measures are taken at the time of registration. Reactive measures are addressed via compliance and enforcement mechanisms and through dispute processes.*

*Allegation that a domain is not used for legitimate music purposes or otherwise infringes on Policies shall be enforced under the provisions of the .MUSIC Policy & Copyright Infringement Dispute Resolution Process ("MPCIDRP").*

*The MPCIDRP is not a replacement for alleged violation of the UDRP/URS/PDDRP/RRDRP, which shall be enforced under the provisions contained therein.*

*The DRP's are required in the registrars' registration agreements with registrants. Proceedings must be brought by interested 3rd-parties in accordance with associated policies and procedures to dispute resolution providers. DotMusic will conduct random compliance checks across all the .MUSIC Policies. Periodically a sample of .MUSIC registrations will be verified for compliance with all established Policies.*

*If a registrant is found out of compliance with any of the .MUSIC Policies the registrant will be notified that the domain will be placed on registry lock. The registrant will have a reasonable time period to fix the compliance matter or the domain will be terminated. Repeat offenders of Policies will be placed on a special monitoring list that DotMusic will conduct additional compliance checks against. DotMusic holds the right to prohibit repeat offenders from registering .MUSIC domains for a period of time or indefinitely. DotMusic will review all policies and processes on a regular basis with involvement from the .MUSIC*



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*Advisory Committee and discussed publicly at Community events. (Application Answer to Question 18b)*

*Any violation of the .MUSIC Policies will be enforced on a case-by-case, fact-specific basis:*

*1. Any allegation that a domain is not used for legitimate music purposes or otherwise infringes on the .MUSIC Policies shall be enforced under the provisions of the .MUSIC Policy & Copyright Infringement Dispute Resolution Process ("MPCIDRP") as described in our response to question #28.*

*2. Any alleged violation of the UDRP shall be enforced under the provisions contained therein, as modified by the URS.*

*The MPCIDRP, UDRP, and URS are required in the registrars' registration agreements with registrants. Proceedings under the MPCIDRP, UDRP, and URS must be brought by interested third parties in accordance with the associated policies and procedures.*

*DotMusic will conduct random compliance efforts across all the .MUSIC Policies. Periodically a sample of .MUSIC registrations will be verified for compliance with all established .MUSIC Policies.*

*If a Registrant is found out of compliance with any of the .MUSIC Policies the registrant will be notified that the domain will be placed on registry lock. The registrant will have a reasonable time period to fix the compliance matter or the domain will be terminated.*

*Repeat offenders will be placed on a special monitoring list that DotMusic staff will conduct additional compliance checks against. DotMusic holds the right to prohibit repeat offenders from registering .MUSIC domains for a period of time or indefinitely.*

*DotMusic will review all policies and processes on a regular basis with involvement from the .MUSIC Advisory Committee and will present them publicly to enable Music Community constituents to provide feedback. DotMusic will also conduct registrar and registrant surveys based on the level of registrant satisfaction concerning .MUSIC usability and how to improve value proposition.*



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*DotMusic reserves the right to deny, cancel or transfer any registration that it deems necessary, in its discretion, to protect the integrity and stability of the registry, to comply with any applicable laws, government rules or requirements, requests of law enforcement, in compliance with any dispute resolution process, or to avoid any liability, civil or criminal, on the part of DotMusic, as well as its affiliates, subsidiaries, officers, directors and employees. DotMusic reserves the right to freeze a domain during resolution of a dispute. DotMusic reserves the right to terminate a domain for failure by the registrant to demonstrate it meets .MUSIC policies. (Application Answer to Question 20e).*

*DotMusic will implement multiple dispute resolution policies to address dispute over any names not reserved by the above provisions; see response to question #20e and #28 and #29. In particular all domains awarded to registrants are subject to the Uniform Domain Name Dispute Resolution Policy (UDRP), and to any properly-situated court proceeding. DotMusic will ensure appropriate procedures to allow governments, public authorities or IGO's to challenge abuses of names with national or geographic significance at the second level. DotMusic will institute a provision in the registry-registrar agreements and the registrar-registrant agreements, to suspend domains names in the event of a dispute. DotMusic may exercise that right in the case of a dispute over a geographic name.* (Application Answer to Question 22)

*DotMusic, working with Afiliias, will take the requisite operational and technical steps to promote WHOIS data accuracy, limit domain abuse, remove outdated and inaccurate data, and other security measures to ensure the integrity of the TLD. The specific measures include, but are not limited to:*

- *Posting a TLD Anti-Abuse Policy that clearly defines abuse, and provide point-of-contact information for reporting suspected abuse;*
- *Committing to rapid identification and resolution of abuse, including suspensions;*
- *Ensuring completeness of WHOIS information at the time of registration;*
- *Performing data validations of WHOIS elements at time of registration and exploring mechanisms for re-evaluation when registrants update such information;*
- *Publishing and maintaining procedures for removing orphan glue records for names removed from the zone,*





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- *Introducing the .MUSIC Policy & Copyright Infringement Dispute Resolution Process ("MPCIDRP") to ensure eligibility requirements, use and naming policies as established in response to question #20e, and;*
- *Establishing measures to deter WHOIS abuse, including rate-limiting, determining data syntax validity, and implementing and enforcing requirements from the Registry-Registrar Agreement.*

*The Abuse Policy stated below will be enacted under the contractual authority of the registry operator through the Registry-Registrar Agreement, and the obligations will be passed on to and made binding upon registrants. This policy will be posted on the TLD web site along with contact information for registrants or users to report suspected abuse. The policy is designed to address the malicious use of domain names. The registry operator and its registrars will make reasonable attempts to limit significant harm to Internet users. This policy is not intended to take the place of the Uniform Domain Name Dispute Resolution Policy (UDRP) or the Uniform Rapid Suspension System (URS), and it is not to be used as an alternate form of dispute resolution or as a brand protection mechanism. Its intent is not to burden law-abiding or innocent registrants and domain users; rather, the intent is to deter those who use domain names maliciously by engaging in illegal or fraudulent activity.*

*Repeat violations of the Abuse policy will result in a case-by-case review of the abuser(s), and the registry operator reserves the right to escalate the issue, with the intent of levying sanctions that are allowed under the TLD anti-abuse policy.*

*.MUSIC Anti-Abuse Policy:*

*The following Anti-Abuse Policy is effective upon launch of the TLD. Malicious use of domain names will not be tolerated. The nature of such abuses creates security and stability issues for the registry, registrars, and registrants, as well as for users of the Internet in general. The registry operator definition of abusive use of a domain includes, without limitation, the following:*

- *Illegal or fraudulent actions;*
- *Spam: The use of electronic messaging systems to send unsolicited bulk messages. The term applies to email spam and similar abuses such as instant messaging spam, mobile messaging spam, and the spamming of web sites and Internet forums;*



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- *Phishing: The use of counterfeit web pages that are designed to trick recipients into divulging sensitive data such as personally identifying information, usernames, passwords, or financial data;*
- *Pharming: The redirecting of unknowing users to fraudulent sites or services, typically through, but not limited to, DNS hijacking or poisoning;*
- *Willful distribution of malware: The dissemination of software designed to infiltrate or damage a computer system without the owner's informed consent. Examples include, without limitation, computer viruses, worms, keyloggers, and Trojan horses.*
- *Malicious fast-flux hosting: Use of fast-flux techniques with a botnet to disguise the location of web sites or other Internet services, or to avoid detection and mitigation efforts, or to host illegal activities.*
- *Botnet command and control: Services run on a domain name that are used to control a collection of compromised computers or "zombies," or to direct distributed denial-of-service attacks (DDoS attacks);*
- *Illegal Access to Other Computers or Networks: Illegally accessing computers, accounts, or networks belonging to another party, or attempting to penetrate security measures of another individual's system (often known as "hacking"). Also, any activity that might be used as a precursor to an attempted system penetration (e.g. port scan, stealth scan, or other information gathering activity).*

*Pursuant to the Registry-Registrar Agreement, registry operator reserves the right at its sole discretion to deny, cancel, or transfer any registration or transaction, or place any domain name(s) on registry lock, hold, or similar status, that it deems necessary:*

1. *to protect the integrity and stability of the registry;*
2. *to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process;*
3. *to avoid any liability, civil or criminal, on the part of registry operator, as well as its affiliates, subsidiaries, officers, directors, and employees;*
4. *per the terms of the registration agreement and this Anti-Abuse Policy, or*
5. *to correct mistakes made by registry operator or any registrar in connection with a domain name registration. Registry operator also reserves the right to place upon registry lock, hold, or similar status a domain name during resolution of a dispute.*

*The policy stated above will be accompanied by notes about how to submit a report to the registry operator's abuse point of contact, and how to report an*



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*orphan glue record suspected of being used in connection with malicious conduct (see below).*

*Abuse point of contact and procedures for handling abuse complaints:*

*The registry operator will establish an abuse point of contact. This contact will be a role-based e-mail address of the form "abuse@registry.MUSIC". This e-mail address will allow multiple staff members to monitor abuse reports on a 24x7 basis, and then work toward closure of cases as each situation calls for. For tracking purposes, the registry operator will have a ticketing system with which all complaints will be tracked internally. The reporter will be provided with the ticket reference identifier for potential follow-up. Afiliac will integrate its existing ticketing system with the registry operator's to ensure uniform tracking and handling of the complaint. This role-based approach has been used successfully by ISPs, e-mail service providers, and registrars for many years, and is considered a global best practice.*

*The registry operator's designated abuse handlers will then evaluate complaints received via the abuse system address. They will decide whether a particular issue is of concern, and decide what action, if any, is appropriate.*

*.MUSIC Community Specific Protections:*

*In protection of the interests of the Music Community, in line with the .MUSIC mission established in response to question #18, DotMUSIC reserves the right to deny, cancel, transfer and registration that it deems necessary, in its discretion, to protect the integrity and stability of the registry, to comply with any applicable laws, government rules or requirements, requests of law enforcement agencies, in compliance with any dispute resolution process result, or to avoid any liability, civil, or criminal, on the part of the registry operator, its affiliates, subsidiaries, officers, directors, and employees. DotMusic reserves the right to lock a domain name during resolution of a dispute. DotMusic reserves the right to terminate a domain at any time for failure of the registrant to demonstrate that it meets all established requirements under .MUSIC policies.*

*.MUSIC has established specific protection mechanisms as described in the response to question #20e. As a means to cure any disputes concerning adherence to the .MUSIC requirements and policies, DotMUSIC is establishing the .MUSIC*



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*Policy & Copyright Infringement Dispute Resolution Process ("MPCIDRP"). All .MUSIC registrants will be bound by this policy by means of the .MUSIC Registration Agreement.*

*The MPCIDRP may be invoked by any third party in order to solve a dispute with a registrant over the registration or use of the registration in violation of the .MUSIC policies. A dispute filing can take place with any approved MPCIDRP dispute resolution provider and must specify how the domain name is in violation of the purposes contemplated by the definition and qualification of a .MUSIC. The details of the MPCIDRP will be published prior to the launch of .MUSIC. Details of the process, proceedings, and supplemental rules a complainant must follow will be developed in coordination with respective dispute resolution providers and it will also be published prior to launch of .MUSIC. (Application Answer to Question 28)*

According to the DotMusic Application:

*"The .MUSIC Mission and Purpose is creating a trusted, safe online haven for music consumption...protecting intellectual property and fighting piracy." The TLD will be exclusive to the Community and "will incorporate enhanced safeguards and Use policies to protect creators, intellectual property and rights holders." DotMusic has developed "policies to protect intellectual property, fight piracy and ensure .MUSIC domains are allocated using fair methods so that music consumers and Internet users are assured the highest level of trust and authenticity when they visit a .MUSIC domain."*

*"A Global Protected Marks List (GPML) will reserve all major music brands and established artists, such as RIAA-certified platinum-selling bands. The music-themed domain is built with usage polices that will enable taking down infringing sites, protecting trademarks and help the exploitation of copyrights by providing a safe haven for legal music distribution, consumption and licensing." (Application Answer to Question 18).*

*"DotMusic will review all policies and processes on a regular basis with involvement from the .MUSIC Advisory Committee [PAB]." (Application Answer to Question 20).*

According to the DotMusic Application:



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DotMusic has incorporated a wide array of appeals mechanisms, whereby registrants have the right to request a review of a decision to revoke their right to hold a domain name and have reasonable time to file an appeal to fix the Registration Policy incompliance:

*If a Registrant is found out of compliance with any of the .MUSIC Policies the registrant will be notified that the domain will be placed on registry lock. The registrant will have a reasonable time period to fix the compliance matter or the domain will be terminated. (Application Answer to Question 20e).*

DotMusic has numerous proactive and reactive Enforcement Policies, which include:

- (i) Random compliance checks on registered domains:

*DotMusic will conduct random compliance efforts across all the .MUSIC Policies. Periodically a sample of .MUSIC registrations will be verified for compliance with all established .MUSIC Policies. (Application Answer to Question 20e).*

- (ii) Mandates that .music registrants must report any illegal activity or Registrant Policy incompliance using a registrant crowdsourcing and an MCMO trusted sender enforcement model for complaints:

*Immediately notify us if there is a security breach, other member incompliance or illegal activity on .MUSIC sites. (Application Answer to Question 20e)*

*The MPCIDRP may be invoked by any third party in order to solve a dispute with a registrant over the registration or use of the registration in violation of the .MUSIC policies. (Application Answer to Question 28)*

The Registrant-powered crowdsourcing enforcement measure will serve the public interest because it is a scalable, proactive and reliable enforcement mechanism for reporting intellectual property infringement, filtering inappropriate content and strengthening Registration Policy compliance and security.

For additional proactive enforcement, DotMusic may also incorporate crawler and music fingerprinting screening technology in addition to the random compliance checks for proactive Enforcement. Using primarily automated digital fingerprinting technology, DotMusic can thwart piracy on .music domains and deter bad actors from spreading copyrighted content by leveraging this proactive and automated screening process.



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According to the Application:

*DotMusic and Afiliias may also engage in proactive screening of its zone for malicious use of the domains in the TLD. (Application Answer to Question 28).*

DotMusic has incorporated extensive and specific Enforcement Appeals mechanisms for registrants and 3<sup>rd</sup>-parties to fix incompliance matters or settle disputes. According to the Application:

*.MUSIC Community Specific Protections:*

*DotMusic reserves the right to lock a domain name during resolution of a dispute. DotMusic reserves the right to terminate a domain at any time for failure of the registrant to demonstrate that it meets all established requirements under .MUSIC policies.*

*As a means to cure any disputes concerning adherence to the .MUSIC requirements and policies, DotMUSIC is establishing the .MUSIC Policy & Copyright Infringement Dispute Resolution Process ("MPCIDRP"). All .MUSIC registrants will be bound by this policy by means of the .MUSIC Registration Agreement.*

*The MPCIDRP may be invoked by any third party in order to solve a dispute with a registrant over the registration or use of the registration in violation of the .MUSIC policies. A dispute filing can take place with any approved MPCIDRP dispute resolution provider and must specify how the domain name is in violation of the purposes contemplated by the definition and qualification of a .MUSIC. The details of the MPCIDRP will be published prior to the launch of .MUSIC. Details of the process, proceedings, and supplemental rules a complainant must follow will be developed in coordination with respective dispute resolution providers and it will also be published prior to launch of .MUSIC. (Application Answer to Question 28)*

The DotMusic MPCIDRP Dispute Resolution Provider is the National Arbitration Forum. Comprehensive Dispute Resolution Processes and Appeals Mechanisms have been created under the music-tailored MPCIDRP. The MPCIDRP is music-tailored process beyond what is mandated by ICANN for new gTLD registries for challenges pertaining to registrant Registration Policy compliance and intellectual property



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infringement (which includes both trademark and copyright violations). Appeals mechanisms available under the MPCIDRP include:

i. Reinstatement Reconsideration

- (1) If a registrant is found out of compliance with any of the .MUSIC Policies the registrant will be notified that the domain will be placed on registry lock. The registrant will have a reasonable time period to fix the compliance matter or the domain will be terminated.
- (2) If a domain name registration is found to conflict with an entry on the GPML, the registration will be terminated.

*For a domain name terminated by the Registry, the registrant may appeal the termination with the Registry. If the domain name is not reinstated, the registrant may bring a request for reinstatement reconsideration to the Provider. Reinstatement reconsideration must be brought within 30 days of the Registry's final determination.*

ii. Copyright Infringement Appeal

- (1) Registrant can appeal removal of content that was removed by the Registry
- (2) Registrant can appeal registry decision not to remove content

iii. Music Community Member Organization (MCMO) Eligibility Reconsideration Request

*An organization that was denied qualification as a MCMO by the Registry may appeal that determination at the Registry. If the organization is still declined membership, the application organization may bring a request for reinstatement reconsideration to the Provider. A MCMO Eligibility reconsideration request must be brought within 30 days of the Registry's final determination.*

iv. Geographic Public Interest Appeal

*Governments/public authorities/IGOs may challenge abuses of names with national or geographic significance with the Registry. This Registry determination can be appealed with the National Arbitration Forum dispute resolution provider if the Registry failed to follow Registration Policy procedures. A Geographic Public Interest Appeal must be brought within 90 days of the Registry's final determination.*

v. Policy Advisory Board (PAB) Decision Appeal



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*A majority of the PAB may direct the Registry to take action against a Registrant for registrations that substantially and negatively affect the objectives of the .MUSIC Registry. This PAB determination and Registry implementation can be appealed by a Registrant with the National Arbitration Forum. A PAB Decision Appeal must be brought within 30 days of the Registry's final determination. (National Arbitration Forum Dispute Resolution Provider's MPCIDRP page for DotMusic<sup>7</sup>).*

**C) Far Further filed a 142-Page Clarification Document to ICANN and the EIU before their Community Priority Evaluation**

Far Further misleadingly posits that:

*[DotMusic's] "clarifications" contain wording that clearly utilizes learnings from previous CPE results (including our [Far Further's] own), in violation of ICANN policy.<sup>8</sup>*

DotMusic and ICANN staff did not violate any ICANN policy with respect to "clarifications." Applicant positions may be made public record by Applicants in numerous manners, such as sending correspondence letters to ICANN or making it public on their corresponding websites, which panels will be reviewing as part of their additional research.

According to the ICANN's CPE FAQ<sup>9</sup> from 31<sup>st</sup> October, 2013:

*The CPE Panel will review publicly available information including the publicly available portions of the application, application comments on the application, objection determinations, correspondence (letters of support or objection related to the application), and additional research as necessary to complete the evaluation per the AGB criteria in section 4.2.3 and the CPE Panel's guidelines available here: <http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>*

It is public record that Far Further has submitted an extensive 142-page "clarification" document to ICANN and the EIU about their Community Definition and Registration Policies before their application's Community Priority Evaluation.<sup>10</sup>

<sup>7</sup> National Arbitration Forum (NAF), The .MUSIC Policy & Copyright Infringement Dispute Resolution Process ("MPCIDRP"), <http://www.adrforum.com/RegistrySpec>, Please download the DotMusic MPCIDRP document at [http://www.adrforum.com/users/odr/resources/Music\\_Policy\\_and\\_Copyright\\_Infringement\\_Dispute\\_Resolution\\_Process\\_final%20\(2\).docx](http://www.adrforum.com/users/odr/resources/Music_Policy_and_Copyright_Infringement_Dispute_Resolution_Process_final%20(2).docx) for more detail on DotMusic's specific appeals/reconsideration request mechanisms under the MPCIDRP

<sup>8</sup> .Music LLC Reconsideration Request 15-6, <https://www.icann.org/en/system/files/files/reconsideration-request-15-6-music-redacted-17apr15-en.pdf>, Pg.6

<sup>9</sup> <http://newgtlds.icann.org/en/applicants/cpe/faqs-31oct13-en.pdf> , Pg.

<sup>10</sup> <http://www.icann.org/en/system/files/correspondence/frankenheimer-to-crocker-chehade-03jul14-en.pdf>





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DotMusic's PIC, including any clarifications on how the DotMusic PIC is consistent with the DotMusic Application and serves the public interest and music community. Such information and the consistency of DotMusic's definitions and policies are also publicly available on the DotMusic website.<sup>11</sup>

Furthermore, clarifying questions are common in the New gTLD Program and ICANN is not violating its policies where a Panel has clarifying question or if an Applicant provides clarifications. According to ICANN:

*Pilot evaluations demonstrate that approximately 90% of applications are likely to be the subject of "clarification questions," but that a very high majority of applications are expected to pass the initial evaluation.*<sup>12</sup>

#### **D) Obstruction Tactics by Far Further Harming DotMusic, the Public Interest and the Global Music Community**

The Request for Reconsideration filed by .Music LLC is spurious, unsubstantiated, and rife with mischaracterizations, the Reconsideration was filed to obstruct DotMusic's Application. This tactic is aligned with other obstruction tactics.

Such obstruction tactics, included an unsubstantiated opposition letter filed against DotMusic by the Songwriters Guild of America (SGA) -- a Far Further supporting organization -- before their CPE evaluation was determined.

Following the Far Further CPE determination -- which did not prevail because it scored 3 out of a16 points<sup>13</sup> -- DotMusic reached out again to Far Further with a .MUSIC community partnership proposal that included a 50-50 basis deal with respect to the equity of its executives John Styll and Loren Balman. Such a good faith effort to work together was rejected by Far Further and was considered underwhelming.

DotMusic also reached out to Far Further's supporting organizations to clarify the misconceptions about our Application policies that were misrepresented in the SGA letter and also to re-iterate our readiness to unite under one community Application.

On March 5<sup>th</sup>, 2015, a letter<sup>14</sup> was sent to ICANN by Victoria Sheckler from the RIAA and on behalf of a global music community coalition -- which included the SGA (emphasis added) --

<sup>11</sup> <http://music.us/pic/>

<sup>12</sup> ICANN, Information Paper For Applicants: New gTLD Evaluation Status, <https://newgtlds.icann.org/en/applicants/eval-status-08aug12-en.pdf>, August 8<sup>th</sup>, 2012, Pg. 1

<sup>13</sup> <https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>

<sup>14</sup> <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>



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representing “over 80% of the world’s music,” to support .MUSIC community applications, including statement in support of DotMusic’s policies that confirmed that the coalition “was encouraged to see” that DotMusic “included several measures to deter and address copyright infringement within that TLD.”

A second support letter<sup>15</sup> was sent to ICANN on March 7<sup>th</sup>, 2015 by another Far Further supporter, Rich Bengloff from the A2IM and on behalf of a majority of a global music community coalition representing a majority of the independent music community, to support the “community” applications for .MUSIC and to reiterate the positions expressed by the RIAA coalition letter that “we expect...the community application process...to have meaning and for the community preference criteria (CPE)...to be interpreted thoughtfully, diligently, and in a responsible manner in light of the public interest and with consumer safety in mind ” and for ICANN “to expeditiously implement appropriate changes to address [concerns].”

A third letter<sup>16</sup> was sent to ICANN on April 14<sup>th</sup>, 2015, by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, which expressed their “support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest” and “to withdraw our organizations from the portion a [SGA] letter sent to ICANN last year pertaining to DotMusic’s community-based application.”

Yet another supporting organization of Far Further, SESAC, also withdrew its organization from the SGA letter, instead choosing to support both community applications “for the safe and reliable operation of the MUSIC domain under a community TLD multi-stakeholder governance model with Enhanced Safeguards.”<sup>17</sup> Finally,, the International Federation of Musicians also withdrew its organization from the SGA letter and now also “supports the community-based DotMusic Application for .MUSIC to safeguard intellectual property and serve the legitimate interests of the entire global music community.”<sup>18</sup>

In short, DotMusic’s community application now has an overwhelming majority of community support as defined in the DotMusic Application without discrimination following a multi-stakeholder model of governance and inclusion of all global music stakeholder types. Furthermore, the obstruction letter that was spearheaded by Far Further is now invalid and irrelevant as per the CPE Guidelines.

<sup>15</sup> <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

<sup>16</sup> <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-eiu-14apr15-en.pdf>

<sup>17</sup> <https://www.icann.org/en/system/files/correspondence/collins-to-eiu-22feb15-en.pdf>

<sup>18</sup> <https://www.icann.org/en/system/files/correspondence/roussos-to-icann-eiu-1-31mar15-en.pdf>



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## Conclusion

Following their CPE determination, which did not prevail, Far Further filed another Reconsideration Request against the CPE Panel and ICANN, which was rejected by the ICANN BGC.<sup>19</sup>

### *VI. Determination.*

*“...Based on the foregoing, the (ICANN) BGC concludes that the Requester has not stated proper grounds for reconsideration, and therefore denies Request 14-45. As there is no indication that either the CPE Panel or ICANN violated any ICANN policy or procedure with respect to the Report, the BGC concludes that this determination is final and that no further consideration by the Board is warranted...”*

Far Further now asks the ICANN BGC to allow Far Further to have its application re-evaluated by the EIU. Far Further requests that:

*[ICANN] should approve the previously-submitted .Music LLC Change Request and re-submit the application to the EIU for a new CPE.*<sup>20</sup>

No PIC submission by an Applicant entitles another Applicant to a re-evaluation. Applicants are scored and graded based on the merits of their Application and their Policies.

According to Far Further:

*We are an applicant for a gTLD under ICANN’s New gTLD program. We have applied on the basis that .MUSIC is a “community” application as defined in the program. We have been denied community status in the Community Priority Evaluation and now have the opportunity to win the string at auction unless DotMusic Limited prevails in CPE.*<sup>21</sup>

Far Further’s intent is clearly revealed in this spurious Request for Reconsideration: to obstruct DotMusic’s Application from prevailing in CPE so that .music is auctioned in a private or ICANN auction that would benefit Far Further.

DotMusic would like to re-iterate its public comments and concerns made to ICANN CEO Fadi Chehade and the ICANN Board at the Public Forum at the ICANN Meeting in Singapore on the

<sup>19</sup> .Music LLC Reconsideration Request 14-45, <https://www.icann.org/en/system/files/files/determination-music-18nov14-en.pdf> , Pg.16

<sup>20</sup> .Music LLC Reconsideration Request 15-6, <https://www.icann.org/en/system/files/files/reconsideration-request-15-6-music-redacted-17apr15-en.pdf>, Pg.7

<sup>21</sup> .Music LLC Reconsideration Request 15-6, <https://www.icann.org/en/system/files/files/reconsideration-request-15-6-music-redacted-17apr15-en.pdf>, Pg.8



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12<sup>th</sup> of February, 2015<sup>22</sup> concerning ongoing obstruction tactics undertaken by competitors. This re-consideration request is yet another tactic by Far Further to obstruct DotMusic, its Public Interest Commitments and more importantly the Community itself.

In light of the new support letters cited above, it is clear that Far Further's new obstruction tactic now seeks to compromise those supporting organizations that have supported Far Further's community Application, but are now also supporting DotMusic's Application in the spirit of a unified global music community initiative to serve the legitimate interests of the community.

Unfortunately, DotMusic expects more anti-competitive and obstruction tactics to be taken against DotMusic and we urge ICANN to protect the Community from such ongoing spurious, unsubstantiated and anti-competitive activity against community applications which has plagued the New gTLD Program.

Given the overwhelming evidence presented, we kindly request the BGC to conclude that .Music LLC/Far Further has not stated proper grounds for reconsideration, and deny Request 15-6 because there is no indication that either the ICANN staff or DotMusic violated any ICANN policy or procedure and determine that no further consideration by the Board is warranted.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "C. Roussos", with a long horizontal flourish extending to the right.

Constantine Roussos  
Founder  
DotMusic

Website: <http://www.music.us>

Email: Contact Information Redacted

Cc: Jason Schaeffer, DotMusic General Counsel

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<sup>22</sup> <http://singapore52.icann.org/en/schedule/thu-public-forum/transcript-public-forum-12feb15-en.pdf> Pg. 59-61