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The Economist Intelligence Unit
ICANN Community Priority Evaluation Panel

Re: Far Further LLC Application for <.MUSIC>
Comment to Community Priority Evaluation

Dear Sir or Madam:

Please see the following comment regarding the Community Priority Evaluation (“CPE”) pertaining to the application for <.MUSIC> (the “String”) made by .music LLC, a subsidiary of Far Further LLC (“Applicant”). The Applicant was invited to participate in CPE on June 18, 2014. See <http://newgtlds.icann.org/en/applicants/cpe#invitations>.

We make this submission on behalf of Victor Cross, LLC, which also has applied for the String. We understand that this letter and comment will be published on ICANN’s official correspondence page, <http://www.icann.org/en/news/correspondence>, where it will be available for the Panel’s consideration.

Any questions may be directed to the undersigned. Thank you for your consideration.

Respectfully submitted,

/jmg/

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Comment to Community Priority Evaluation**

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INTRODUCTION

The Community Priority Evaluation ("CPE") is a serious undertaking. While it protects true communities and their designations, a "successful" CPE also *disqualifies* otherwise legitimate applicants that have met the rigorous criteria to obtain a top-level domain:

[A] qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application.

Applicant Guidebook ("Guidebook" or "AGB") § 4.2.3 at 4-9. Accordingly, ICANN created scoring to "identify qualified community-based applications," while preventing "false positives" -- *i.e.*, "awarding undue priority to an application that refers to a 'community' construed merely to get a sought-after generic word as a gTLD string." *Id.*

The system grants community priority only to applications that score at least 14 out of 16 possible points across four categories. *Id.* at 4-10. "In cases of generic words submitted as community based strings, test runs by [ICANN] staff show that the threshold is difficult to attain" See <https://archive.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf> at 103. The application under review ("Application") – by .music LLC, "a Far Further company" ("Applicant" or "Far Further")¹ – falls well short of that threshold, and cannot eliminate legitimate competing applicants.

It should come as no surprise that Applicant cannot succeed in co-opting a term of such broad applicability as "music." ICANN formulated the community TLD to protect the labels of real, discrete and well-defined groups, not to allow opportunists the means to *commandeer* common dictionary words for their own purposes. That would run directly contrary to the intent of the new gTLD program to *increase* competition, not impede it.²

The variety, breadth and universality of "music" prevents Far Further from earning the four possible points for "community establishment," the first of the CPE factors. Nor does the term "identify" a "community" – certainly not exactly or uniquely, and not even substantially – so as to qualify the Application for *any* of the four available points for "nexus," the second prong of the evaluation.

Deficiencies in the third and fourth aspects of the test – "registration policies" and "community support," respectively – cause the Application to lose additional points. For example, to obtain two "support" points, an application must have backing by a majority the broad community – as defined by the *string*, not by the *applicant*. In this case, that means a global "music" population, not merely Far Further's own member base.

¹ See <http://www.farfarther.com/contact-us.html>; see also Applic. § 9(b).

² See <http://newgtlds.icann.org/en/about/program>.

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The Applicant undertakes the CPE essentially as a “low cost, high reward” gamble. It tries inappropriately to use the CPE to circumvent the appropriate contention set resolution process defined by ICANN.

This does not diminish the Application; it simply does not meet ICANN’s stringent community criteria. The Applicant overreaches, going “far further” than “MUSIC” reasonably can go in purporting to denote a community. It cannot properly claim a truly global moniker for its own use while excluding users in the rest of the world. While Far Further certainly has the right to move forward with its Application, it must do so on the same level as all applicants, who have equal rights to compete for the string.

ANALYSIS

The Guidebook allows the panel to award up to four points in each of four categories (maximum points in parentheses):

- "Community establishment," which involves "delineation" (2) and "extension" (2), AGB at 4-10 *et seq.*;
- "Nexus," meaning both “nexus” (3) and "uniqueness" (1), *id.* at 4-12 *et seq.*;
- "Registration policies," consisting of "eligibility" (1), "name selection" (1), "content and use" (1) and "enforcement" (1), *id.* at 4-14 *et seq.*; and
- "Community endorsement," which considers "support" (2) and "opposition" (2), *id.* at 4-18 *et seq.*

Applying the standards established by ICANN for these criteria, and giving Far Further the benefit of all doubts on each, the Application can earn no more than about 10 of the 16 available points. Among other deficiencies, it cannot earn any points for “nexus” given the clear examples in the Guidebook, and the inquiry could stop there. Again, this result does not defeat the Application altogether; it simply requires Far Further to compete for the string as all other applicants must.

CRITERION 1: The Application does not "establish" a "community," which requires more than just a commonality of interests.

A "community" as described in the Guidebook "impl[ies] more cohesion than a mere commonality of interest." AGB at 4-11. As such, the Guidebook calls for examining the claimed community in terms of its "delineation" and "extension."

"Delineation' relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low." *Id.* The test considers:

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- the “level of public recognition of the group as a community,” including the existence of “formal boundaries around” it and “what persons or entities ... form” it (which we call the “Identification” factor),
- whether the alleged community pre-dates the commencement of the new gTLD program in 2007 (the “Existence” element), and
- the level of “organization” of the community through at least one dedicated entity with documented evidence of community activities (“Organization”).

AGB at 4-11. On the other hand, “extension” relates to “the dimensions of the community, regarding its number of members, geographical reach, and foreseeable activity lifetime” *Id.* See also Economic Intelligence Unit CPE Guidelines (the “Guidelines”) at pgs. 5-6.

The Application reflects no clear "delineation" of any "community."

Satisfying all three of the Identification, Existence and Organization factors will allow an application to score up to a 2. AGB at 4-12. While “music” certainly has “existed” since humans first created it millennia ago, the Application does not satisfy the “delineation” elements sufficiently to merit the full two points.

The Application does not “Identify” a community with a “clear and straight-forward” definition to make “members” aware of their status as such.

Far Further describes its purported community as “music creators and the professionals who support them.” *Applic.* § 20(a). The definition of “music creators” is itself hardly straight-forward. Theoretically anyone can be a “music creator” simply by singing in the shower, drumming fingers on a desk or whistling in a park. The Applicant’s supporting organizations primarily skew toward the more commercial or institutional aspects of music, but “music creators” themselves, although Far Further itself has chosen that term, are not so circumscribed.

Understanding who comprise the “professionals who support” the “music creators” presents just as much difficulty. The Application at Section 20(a) identifies a variety of trade groups and others who “support” the music *industry*, such as managers, performing rights societies and merchants, as well as educational and governmental institutions, all of whom seem quite obviously to fit within a “supporting professionals” definition. Again, though, other “professionals” give “support” to “creators of music” in a less formal way. The corner print shop may make flyers to promote a local band’s next performance.³ Parents “support” their children’s musical interests by playing music or getting lessons for them. Non-music “professionals” make charitable donations to “support” the arts.⁴ These and numerous other examples would fall within Far Further’s

³ See, e.g., <http://www.fedex.com/us/office/sell-sheet-printing.html>.

⁴ See, e.g., <http://latimesblogs.latimes.com/culturemonster/2012/02/chronicle-philanthropy-top-arts-donors.html>.

“community” definition, making it “unclear, dispersed or unbound” rather than “clear and straight-forward” as required for full points. See AGB at 4-11; Guidelines at 4.

More telling is whether “music creators” would readily recognize themselves as part of a specific group. Likely not, since it could include basically anyone in the world. The “professionals who support” this amorphous group also would lack such awareness. Such a grouping would include many affiliated businesses and sectors with only a tangential relationship to the alleged community at issue, and would not specifically associate themselves with the community as defined by the Applicant. The Panel has recognized this in denying “delineation” points to a community applicant for <.TAXI>.⁵ The same result should follow here.

The “community” is “construed” and, therefore, neither “organized” nor “pre-existing.”

Far Further’s “community” is a construed one, designed merely to satisfy CPE analysis. The Applicant itself came into existence in 2008,⁶ and by its own admission did not until 2011 begin to “reach out to several organizations, representing a broad cross section of the GMC,⁷ to garner their support and endorsement.” Applic. § 20(b). While it may have undertaken to coordinate these disparate existing organizations into supporting its Application, the “community” so construed by Far Further did not “pre-exist” in the “organized” fashion presented for purposes of the Application. The Panel similarly so held with respect to the community application for <.IMMO>.⁸

Isolating a “clearly delineated community” from an inherently vague term like “MUSIC” is extremely difficult, if not impossible. The Application confirms this. It fails to meet the community “Identification” standard due to its unclear membership definition. This infirmity also affects whether the proposed community can be found “organized” and “pre-existing.” Certainly, Far Further cannot score the full 2 points in this sub-category.

The limits of the alleged “community” do not allow an award of both “extension” points.

Far Further also loses at least a point on “Extension.” This test examines two aspects: size and longevity. Neither concept applies in the abstract; both are examined in the context of the proffered community.

An analysis of “size” illustrates this. “Two conditions must be met to fulfil the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community amongst its members.” See EIU Community

⁵ <https://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf> at 2.

⁶ See <https://tnbear.tn.gov/Ecommerce/FilingSearch.aspx>.

⁷ Applicant uses this abbreviation for its alleged “Global Music Community.”

⁸ <https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf> at 2-3.

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Priority Evaluation Report re: .INC.⁹ Far Further may deem its “current addressable community membership” to be “greater than four million unique members in more than 150 countries,” Applic. § 20(a), but as shown above these “members” likely would have little awareness or recognition that they are part of any specific “community.” A similar analysis governs “longevity.”

While the “size” and “longevity” of the world’s interest in “music” can hardly be questioned, the extent to which these attributes apply to a “community” prevents the Application from garnering the full two points for Extension. See EIU Community Priority Evaluation Report re: .LLP.¹⁰

When combined with what likewise should be no more than one point for delineation, the application should yield no more than two of the four possible “Community Establishment” points.

CRITERION 2: The application does not establish sufficient "nexus" with the non-unique term "MUSIC."

Criterion 2 requires a "nexus" between the asserted community and the applied-for string. AGB at 4-12. The test consists of a "nexus" factor, worth zero, two or three points, and a "uniqueness" score of zero to one. An application must score at least 2 points for “nexus” in order to obtain a point for “uniqueness.” See AGB at 4-14. Thus, the system allows a score of 4, 3, 2 or 0 points, but not a score of 1. Far Further, as shown below, merits none.

The application cannot earn the available three "nexus" subpoints.

The three “nexus” subpoints available under the larger 4-point nexus test are awarded as follows:

- For a score of 3: The string matches the name of the community or is a well-known short-form or abbreviation of the community name;
- For a score of 2: String identifies the community, but does not qualify for a score of 3; and
- For a score of 0: String nexus does not fulfill the requirements for a score of 2.

AGB § 4.2.3. These guidelines make immediately apparent that the Application cannot earn 3 nexus points.

The word “MUSIC” can mean many things to many people. However, it does not “match” the name of the “community” even as Far Further has designated it. Nor,

⁹ <https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf> at 3.

¹⁰ <https://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf> at 3.

because of the term's wide application, does it adequately "identify" any "community." The Application overreaches and cannot earn any of the three potential "nexus" points.

The String .MUSIC does not "match" the name of the alleged community, so the Application cannot be awarded three points.

The Application claims to represent the "Global Music Community." Applic. § 20(a). However, Far Further applies for the more generic appellation "MUSIC." This does not "match" the "name" of the "community" even as Far Further has described it.

"Match" is of a higher standard than "identify," and means corresponds to or "is equal to." See Guidelines at 7. In its analysis of .MLS, for example, the EIU found no "match" between applicant "Canadian Real Estate Association" (*a/k/a* "CREA") and the string ".MLS" even despite CREA's affirmative claim of trademark rights in the acronym.¹¹

A similar analysis applies in this case. According to Far Further:

The Global Music Community (GMC) is comprised of an international range of associations and organizations and the millions of individuals these organizations represent, all of whom are involved in the creation, development, publishing, recording, advocacy, promotion, distribution, education, preservation and or nurturing of the art of music.

Applic. § 20(a). The foregoing more specifically describes the *business* and *institutions* of music, not the subject of music or the public's involvement with it more generally, as the generic string <.MUSIC> both expresses and implies. However, the Application does not seek a string such as <.MUSIC-BUSINESS> or <.MUSIC-INDUSTRY> so as to "match" the "community" that Far Further itself describes.

Although it portrays itself as the anointed representative of the "GMC," Far Further of course has not applied for a string using its own name, such as <.FARFURTHER> or even <.FARFURTHER-SUPPORTERS>, the latter of which would more accurately describe its constituency. Instead, it has formed a "shell" entity with a name corresponding to the string for which it applies. That artifice cannot create the requisite match since, if it could, *any applicant* could "bootstrap" its way into satisfying the requirement. In fact, besides Far Further, several applicants for the string at issue here have attempted to do just that:

- "DotMusic Limited," from Cyprus, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>;
- "DotMusic Inc.," based in UAE, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1497>; and

¹¹ <https://www.icann.org/sites/default/files/tlds/mls/mls-cpe-1-1888-47714-en.pdf> at 4.

- “dot Music Limited,” of Gibraltar, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1261>

The *string* must *match* the *community*, not the Applicant. A highly generic and malleable term like "MUSIC" simply does not do so, in the same sense that, for example, the "Navajo" and "Boy Scout" communities go by those precise names. The Application, therefore, cannot receive three points.

The string .MUSIC does not even “identify” Far Further’s “community” to earn 2 points under Guidebook standards.

Nor can the Application achieve a score of 2. To do so, the applied-for string would have to "*closely describe* the community or the community members, *without over-reaching substantially beyond* the community." *Id.* at 4-13 (emphases added). While “.MUSIC” may *help* “describe” the purported community, it does not do so “closely” to warrant a score of 2.

Far Further relies on the member-base of its supporting entities – *e.g.*, record labels, publishers and the like – as if these subsets encompass every person or entity with a potential use for the generic term “MUSIC” throughout the world. This is clearly not the case, as numerous others undoubtedly would have an interest in the string, such as:

- Music fans (*e.g.*, <http://www.musicfanclubs.org/>);
- Destinations for music fans, such as the Rock and Roll Hall of Fame (<http://www.rockhall.com/>) and the Country Music Hall of Fame (<http://countrymusicHallofFame.com>);
- Concert venue operators (*e.g.*, The Sydney Opera House <http://www.sydneyoperahouse.com/>) and promoters (*e.g.*, the Coachella Music Festival in Indio, CA, <http://www.coachella.com/>);
- Merchandise fabricators and distributors (*e.g.*, <http://www.rockabilia.com/#>);
- Radio stations, whether terrestrial (like Z-100 FM in New York, NY, <http://z100.com>), online (*e.g.*, Pandora <http://pandora.com>) or satellite (Sirius XM, <http://www.siriusxm.com/>);
- Music magazines (*e.g.*, Rolling Stone <http://www.rollingstone.com/> or Spin <http://spin.com>) and review websites (*e.g.* <http://allmusic.com>); and
- Nightclub owners and disc jockeys (*e.g.* “DJ Jack Hill,” the “youngest club DJ” at just 7 years of age, <https://www.youtube.com/watch?v=x-wH50Fy7d4>).

The list could go on and on. Far Further acknowledges this greater scope of the string for which it has applied, but expressly excludes such constituencies from its self-described community. For example, “the music lover or consumer is not defined as part of the Global Music Community,” even though the Application expressly recognizes that they and the posited community “DO share a common bond: a passion for music.” Applic. § 20(d).

Far Further thus concedes the direct relevance of <.MUSIC> domains to a “wider or related community” that includes consumers,¹² yet offers no method for them to participate in the TLD. It no doubt did this to define “membership” more narrowly than “the entire world,” but this “delineation” effort comes at the expense of “nexus,” as the generic string applied for reaches well beyond the “community” that Far Further has described. “If the string appears excessively broad (such as, for example, a globally well-known but local tennis club applying for ‘.TENNIS’) then it would not qualify for a 2.” AGB at 4-13. The Application “over-reaches substantially,” in that “MUSIC” indicates a wider “thematic remit than the community has,” and “is not specific to the ... community” claimed by the Applicant. Guidelines at 7, 8.

Far Further made a conscious decision to apply for <.MUSIC>, a string with extremely broad applicability to serve its own purposes, such as to increase its visibility and value as a registry. That is a perfectly legitimate and understandable choice. In making it, however, the Applicant voluntarily abdicated any right to preference over others who would operate the TLD in a more open (and broad-based) manner. Far Further cannot have it both ways. As in the highly analogous case of <.TENNIS>, it should earn none of the three possible “nexus” points.¹³

“MUSIC” does not “uniquely” identify the claimed “community.”

The “uniqueness” subfactor “relates to the meaning of the string.” See <http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv3-15feb10-en.pdf> at 65. Put simply, is the string a truly *unique* word that has no other significant meaning beyond referring to the community asserted by the applicant?

First, the analysis need never reach that question. A point for uniqueness requires “that the string does identify the community, *i.e.*, scores 2 or 3 for ‘Nexus,’ in order to be eligible for a score of 1 for ‘Uniqueness.’” AGB at 4-14. Since the Application here does

¹² “So although we acknowledge that *our definition of the music community does not have individual consumers of music* (unless they belong to one of the Member Organizations of the Global Music Community) we are adamant that everything we do, is ultimately so that more and more people can enjoy music and thus foster its development and growth.” Applic. § 20(d) (emphasis added).

¹³ <http://www.icann.org/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-en.pdf> at 4.

not earn two or three points for “nexus,” the rules also bar it from consideration for a “uniqueness” point.

Even absent that bright line limitation, the Application still would not earn a uniqueness point. As mentioned, that can occur only where the applied-for string has “no other significant meaning beyond identifying the community described in the application.” AGB at 4-13. The term “music,” of course, goes far beyond identifying “music creators and the professionals who serve them” (if it even does that). It describes a virtually limitless subject, a varied “language” of expression, sounds and feelings, and the works of dozens of centuries. A person hearing the word “music” will most certainly *not* think of “music creators and the professionals who serve them” over the limitless other associations he or she could make from the term.

To be an unambiguous identifier, the “ideal” string would have no other associations than to the community in question. This arguably can be achieved by using the community institution abbreviation as string, but there are other possibilities—for example, by putting a prefix or suffix on a generic string to make it distinctly and uniquely associated with the relevant community (again for example, prefixing “boy” to “scouts” for the community of boy scout organizations, or suffixing “growers” to “apple” for the associations of apple growers).

<http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf> at 103. ICANN has thus put the necessary balancing in the hands of applicants. Does one select a popular, well-recognized term that — like .SCOUT or .SCOUTING — that may “describe” the community at issue, but also has other meanings that widen its appeal? Or does the applicant select a more unique and specific community name, such as .BOY-SCOUTS-OF-AMERICA? The latter may deserve a scoring point, whereas the former most assuredly does not.

The breadth of the term “MUSIC” may make it an excellent choice for a top-level domain. However, its ubiquity defeats any ability to associate the word *uniquely* with record labels, agents and the like. Far Further had to choose between a sweeping, common term and a string unique to its specific segment, and it selected the former. While this may have advantages from a marketing or business strategy perspective, it also carries the disadvantage of not uniquely identifying a “community.”

Of the four total points available for “nexus” and “uniqueness,” the Application should earn *zero*. The term is not “unique,” and does not even “closely” describe the purported community. Thus, the Applicant cannot possibly receive the necessary 14 of 16 points to pass CPE, and the Panel need proceed no further. In any event, the additional considerations discussed below only demonstrate that the application must lose a significant number of additional points, which merely reinforces the application’s failure to achieve community status.

CRITERION 3: The Application lacks community-based registration policies.

“Registration policies” represent the conditions that the registry will set for prospective registrants – *i.e.*, those desiring to register second-level domains. A community application will receive one point for each of the four following policies:

- Eligibility restricted to community members (a largely unrestricted approach to eligibility receiving zero points);
- Name selection rules consistent with the articulated community based purpose of the applied for gTLD;
- Rules for content and use consistent with the articulated community based purpose of the applied for gTLD; and
- Specific enforcement mechanisms.

AGB at 4-16. The panel should score applications from a holistic perspective, applying these categories to the particularities of the community explicitly addressed. *Id.* The restrictions and corresponding enforcement mechanisms proposed by the applicant should show an alignment with the community-based purpose of the TLD and demonstrate continuing accountability to the community named in the application. *Id.* See also EIU Community Priority Evaluation of IMMO (“[t]he registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD”).¹⁴

No meaningful eligibility or name selection rules exist.

Far Further purports to limit eligibility for second-level names only to those who are “members of or affiliated with at least one Member Organization of the Global Music Community,” but does not describe the process of “verification of relevant membership data.” Applic. § 20(e). As shown above, the lack of clarity regarding who “belongs” to the “community” provides no guidance as to what “memberships” and “data” are “relevant” or how they can be “verified.” Thus, while the Applicant claims it would limit eligibility to “community members” – appearing, on the surface, to merit a point – the lack of any stated basis for making such a determination militates against awarding even that single point.

For name selection, the Application articulates the “types of second-level names [that] may be registered in the gTLD” only by reference to its own “Reserve Name policy Beyond these, eligible registrants may register domains in compliance with the Registrant Agreement and its Acceptable Use Policy.” Applic. § 20(e). This resembles the situation regarding <.IMMO>:

¹⁴ <https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf> at 5.

Although there are details of reserved, prohibited and third-level names, the name selection rules overall are too vague to be consistent with the broad purpose of the gTLD.

<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf> at 5. The Panel deducted a point in that case, and should do so here as well.

Limiting content and use to compliance with law imposes no “restriction” beyond that required in any registry.

For “content and use,” Far Further states:

Registrants must hold valid rights to all materials displayed on and/or distributed through their specific site. Please see Q28 for details on .music’s Acceptable Use Policy. The dotMusic registry will be regularly monitored potential violations and also provide a robust abuse reporting process for such violations noticed by others. Should the registrant be found in violation, they risk the suspension and ultimately deletion or loss of their domain name.

Applic. § 20(e). Again, just as with <.IMMO>, such restrictions are, at best, “very general and refer primarily to anti-abuse policies, rather than specifying what the content should be restricted to.” <https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf> at 5.

As with name selection, this “restriction” would not have any real impact at all. ICANN already requires registries,¹⁵ and the registrars who obtain domain names through them,¹⁶ to comply with applicable laws, including protecting the intellectual property rights of third parties. A registrant deemed “eligible,” if that can be determined, could conceivably register domain names with websites having nothing at all to do with “music” – e.g., AIRCRAFT.MUSIC, COOKING.MUSIC or VOLLEYBALL.MUSIC – so long as he/she does not commit copyright infringement or similar behavior. This does not amount to a content restriction tailored to the alleged community.

Enforcement procedures fall short of the detail required to earn a point.

Awarding a full point for enforcement requires specificity. See AGB at 4-16. Far Further does propose certain proactive efforts, but again centers them almost entirely around the prevention of copyright infringement. This does not mean that such efforts lack value, or that Far Further will not undertake them, but rather that the Application does not contain the sort of comprehensive enforcement program contemplated in the Guidebook. Even if it did, such a program would present great administrative difficulties

¹⁵ See <http://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-09jan14-en.htm> ¶ 2.8.

¹⁶ See <https://www.icann.org/resources/unthemed-pages/raa-2001-05-17-en> ¶ 3.7.

given the lack of clear eligibility, name selection and content and use restrictions. Far Further should not receive a point for this part of the evaluation.

The foregoing supports awarding no points for registration policies. Deficiencies exist in each of the four areas. If not completely fatal in every case, the Applicant's weak registration policies certainly do not as a whole rise to the level required for community treatment. The Application's vague policies, not community-specific, equate this case to that presented regarding <.IMMO>, where the Panel awarded but one of four possible points. See <https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf> at 5.

CRITERION 4: The Application does not demonstrate unopposed support from a majority of the "Global Music Community."

The "support" criterion looks at both support and opposition, with an application potentially eligible for two points for each subfactor. The Application here should receive no more than a single point on support, as it does not demonstrate that such support represents a "majority" of the overall community. In fact, representatives of large constituencies disenfranchised from the "GMC," as Far Further has defined it, have publicly opposed the Application, which the Panel should consider in determining whether to award both "opposition" points.

Far Further does not demonstrate sufficient recognized support.

For "support," an applicant must demonstrate that:

- It is, or has documented support from, the recognized community institution(s)/member organization(s) or has otherwise documented authority to represent the community. It must have documented support from institutions/organizations representing a *majority* of the overall community in order to score 2.
- Documented support from at least one group with relevance may allow a score of 1, but does not suffice for a score of 2.

See AGB at 4-17. Far Further does not claim itself as the only "recognized" community institution or member organization. Rather, it relies on "documented support" — in the form of 41 letters — from others. In cases involving support from multiple organizations, such "documented support" must "represent[] a majority of the overall community addressed in order to score a 2." AGB at 4-18.

The Application does not demonstrate that support for Far Further rises to that level. To the contrary, abundant grounds exist to conclude otherwise.

First, at least seven (7) other applicants seek the string for themselves. One other, Dot Music LLC,¹⁷ even applies as a *community*, proffering “documented support” from at least 100 different entities.¹⁸ Far Further cites several of the same organizations in support of its own Application,¹⁹ but a much lower total overall, casting serious doubt on whether a “majority” of the asserted “community” supports *its* Application.

Second, major countries, even entire continents, go wholly unrepresented in the Application, including China²⁰ (with a population of over 1.35 billion people), Russia²¹ (pop. 143 million) and Africa (pop. 1.1 billion).²² And, while some organizations listed by Far Further claim to be “international,” well more than half appear primarily focused on the U.S. and Canada.²³

Third, “[s]upport and opposition will be scored in relation to the communities explicitly addressed in the application, *with due regard for communities implicitly addressed by the string.*” Guidelines at 16 (emphasis added). Far Further readily acknowledges music consumers and fans as “relevant” to its Application, Applic. § 20(d), yet offers no support from this important segment. To the contrary, Far Further expressly excludes this massive group from its “Global Music Community” definition. Yet, the broad term “MUSIC” encompasses *all* people with a legitimate interest in the subject.

Fourth, nearly all of the supporting entities are record labels, performing rights societies and similar music “industry” groups. As with the various secretaries of state offered in support of community applications for <.LLC> and <.INC>, these organizations can be seen as simply “fulfilling a function” for a community of “music creators” rather than primarily “representative” of it. See <https://www.icann.org/sites/default/files/tlds/lc/lc-cpe-1-880-17627-en.pdf> at 6-7; <https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf> at 7.

While the Application certainly has support from “at least one group with relevance,” it still does not show support from a majority of all “music creators and the professionals who support them,” much less the billions of music consumers and fans throughout the world implied by the string. Therefore, the Panel can award no more than one point.

¹⁷ See <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

¹⁸ See <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/140935?t:ac=1392>

¹⁹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/134986?t:ac=1659>

²⁰ See, e.g., http://en.wikipedia.org/wiki/Chinese_music

²¹ See, e.g., http://en.wikipedia.org/wiki/Music_of_Russia

²² See, e.g., http://en.wikipedia.org/wiki/Music_of_Africa

²³ See <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/134985?t:ac=1659>

The Application has encountered significant opposition.

On the opposition side, a community applicant will lose a point where there is “relevant” opposition from “one group of non-negligible size,” and will receive no points at all in the case of “relevant opposition from two or more groups of non-negligible size.” AGB at 4-17. “Relevant” opposition means that which comes “from communities not identified in the application but with an association to the applied-for string” *Id.*

Public comments have voiced “relevant” opposition from the large group expressly excluded by the Application – particularly independent, non-institutional, “do-it-yourself” musicians. One comment specifically cited Far Further’s lack of Name Selection rules as a potential detriment to the TLD.²⁴ Other comments,²⁵ by various “music creators” (including one from a “Grammy award winning producer”),²⁶ expressed special concern about the potential for being forced into joining one of Far Further’s supporting organizations as a *quid pro quo* for participating in the TLD. Such comments, from those disenfranchised from the defined “community,” fall directly within the Guidebook’s definition of “relevant” opposition, and represent a group – albeit not a formally organized one, such as those the Applicant has marshalled – of more than “non-negligible” size.

The opposition justifies deduction of one the available two points for that subcategory. Coupled with the reduction of a point for support, the Application should receive no more than two of the possible four points in the last of the community tests.

CONCLUSION

This analysis makes no value judgment regarding Far Further’s efforts in preparing its Application and supplementary materials. One would expect to find it exceedingly difficult to succeed at CPE using such a loose, unbounded amalgamation as that suggested by something as sweeping as “MUSIC.” This is why the CPE criteria are set so high—to prevent the creation of artificial “communities” in order to gain an advantage in the new gTLD process.

An objective consideration of the relevant criteria would suggest the following scores:

- Most appropriately 2, but certainly no more than 3, points for “Community Establishment.”

²⁴ <https://gtldcomment.icann.org/applicationcomment/commentdetails/11443>.

²⁵ <https://gtldcomment.icann.org/applicationcomment/commentdetails/11718> and <https://gtldcomment.icann.org/applicationcomment/commentdetails/11702>.

²⁶ <https://gtldcomment.icann.org/applicationcomment/commentdetails/11706>.

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- Zero points for “Nexus,” and under no circumstances more than two points because the string does not “match” or identify “uniquely” the community claimed in the Application.
- Most reasonably 1, and in no case more than 3, points for “Registration Policies.”
- Two, or a maximum of three, points for “Community Endorsement.”

Thus, eleven points represents the absolute “best case” scenario for the Applicant. Falling well short of the 14 points necessary out of the 16 available, the Application should not pass CPE.