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Dr. Steve Crocker, Chairman of the ICANN Board;
 Fadi Chehadé, ICANN President & CEO;
 Akram Attallah, ICANN President of Generic Domains Division;
 Christine Willett, ICANN Vice-President of gTLD Operations;
 Cherine Chalaby, ICANN Chair of the New gTLD Committee;
 Thomas Schneider, ICANN Chair of Government Advisory Committee;
 Cyrus Namazi, ICANN Vice-President of DNS Engagement;
 John Jeffrey, ICANN General Counsel; and
 Community Priority Evaluation Panel, Economist Intelligence Unit

Re: Update on an Opposition Letter to .MUSIC Community-based Application¹

Dear ICANN and Economist Intelligence Unit (“EIU”):

I write on behalf of DotMusic Limited (hereinafter “DotMusic” or “Applicant”), regarding the Community Priority Evaluation (“CPE”) for Application No. 1-1115-14110 (the “Application”).² We appreciate that CPE is a serious undertaking that requires close evaluation of the Application. As CPE is designed to protect communities and their designations it is important to guard against spurious and irrelevant “opposition.” As the process reaches its end, certain patterns of “opposition” have evolved (and will likely continue).

This submission addresses one letter of opposition that appears to be both misinformed on its substance and filed for anti-competitive reasons. It is respectfully submitted that the letter (the “Letter”)³ filed by the SongWriters Guild of America (the “SGA”) should not be considered relevant. Indeed, the “points of opposition” raised in the Letter were addressed by DotMusic in its Application and, later, clarified in its Public Interest Commitment (PIC)⁴. Moreover, a majority of the alleged “supporters” of the Letter are now supporters of DotMusic and members of Applicant’s Board of Governance.⁵ Thus, while DotMusic appreciates the sentiments expressed by the Letter’s author (and has opened a dialogue with the author) it is clear that this Letter is misinformed and is a spurious opposition filed with anti-competitive intent.

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

² <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

³ <https://www.icann.org/en/system/files/correspondence/carnes-to-icann-24sep14-en.pdf>

⁴ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadpicposting/1392?t:ac=1392>

⁵ <http://music.us/board>



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Accordingly, as specified in Section 4.2.3 of the Applicant Guidebook, we submit that the Letter should not be considered relevant opposition during the grading of DotMusic's Application during CPE. For the following reasons, the Letter is misinformed and should be considered spurious and not relevant for CPE:

1) Timing of Opposition Letter -- September 24th, 2014

The Letter⁶ was filed before the release of the CPE determination⁷ of .music LLC ("Far Further"), a .MUSIC community applicant that the SGA supports.⁸ At the time of the filing, the Letter's author was (and remains) a supporter of Far Further. The Letter was filed during Far Further's evaluation and according to Far Further's CPE results, such a filing should be construed to be filed against competition objectives (because the EIU determined that the exclusion of community members not belonging to select member organizations overreached significantly) and a conflict of interest (because they supported a competitor). All of the Letter's constituents supported .music LLC's application.⁹

The CPE Guidelines, provide that the EIU must review each opposition to ensure no such conflict of interest exists:

*The evaluation process will respect the principles of fairness, transparency, avoiding potential conflicts of interest.*¹⁰

*The following principles characterize the EIU evaluation process for gTLD applications: All EIU evaluators must ensure that no conflicts of interest exist.*¹¹

2) The competing applicant scored three (3) points in CPE¹² so it can be reasonably concluded that: (i) they lacked the necessary CPE requirements and criteria to prevail; and (ii) the Letter was prepared to support one applicant over another hoping that its "preferred" applicant would prevail.

3) By filing a change request to change their community definition and registration policies before their CPE began, the competing applicant (supported by the Letter) revealed that they were aware that their registration policies and community definition lacked the necessary CPE requirements. This request was denied by ICANN because it was a material change to the Application.¹³ It is more

⁶ <https://www.icann.org/en/system/files/correspondence/carnes-to-icann-24sep14-en.pdf>

⁷ <https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>

⁸ Songwriters Guild of America, a supporting organization for .music LLC / Far Further, <https://gtldresult.icann.org/applicationstatus/applicationdetails:downloadattachment/134989?t:ac=1659>, Pg.20

⁹ .music LLC Application, <https://gtldresult.icann.org/applicationstatus/applicationdetails/1659>, 20f

¹⁰ <http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>, P.22

¹¹ ICANN CPE Guidelines, Pg. 22

¹² <https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>

¹³ <https://www.icann.org/en/system/files/files/determination-15-6-Music-llc-06may15-en.pdf>, May 6th, 2015



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likely than not the Letter was prepared at the request of the competing community applicant (and drafted without the alleged supporters full understanding of the clear expressed differences between the competing applications or the ICANN rules, CPE requirements, contractual prerequisites, and GAC advice), especially if the competing applicant was aware that their application did not meet CPE requirements and wanted DotMusic's CPE to lose points under "Opposition" to increase the odds that DotMusic's CPE does not prevail.

4) Following the Far Further CPE result, a majority of the competing Applicant's supporting organizations supported DotMusic (even prior to the CPE result both applicants enjoyed significant overlapping community support). Moreover, a majority of the "community" addressed in the Letter not only withdrew their "support" for the Letter in writing, they expressly supported DotMusic. Thus, the Letter is no longer supported by the alleged parties that were originally included in the Letter.

5) Moreover, the SGA was included as part of a global music Coalition letter submitted to ICANN by the RIAA on behalf of a significant number of global music community constituents. The Coalition letter expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the Coalition -- "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "Coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"¹⁴ – a majority of global music.¹⁵

Therefore, this Coalition Letter is evidence that the original Letter is without merit and not relevant. It is more likely than not the Letter was prepared at the request of the competing community applicant Far Further and drafted without the alleged supporters full understanding of the clear expressed differences between the competing applications or the ICANN rules, CPE requirements, contractual prerequisites, and GAC advice. Given the complexities of the process and intense lobbying efforts, the misunderstandings expressed in the Letter are understandable. As shown below, after the issues were reviewed and considered, a majority of those originally included in the Letter were satisfied and withdrew their support for the Letter, and even moved to support DotMusic.

6) Below are links to letters of support filed by organizations that were originally included in the Letter as "opposing" DotMusic:

ASCAP - <https://www.icann.org/en/system/files/correspondence/ascap-to-icann-24apr15-en.pdf>

¹⁴ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

¹⁵ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A



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BMI - <https://www.icann.org/en/system/files/correspondence/ascap-to-icann-24apr15-en.pdf>

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

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

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

Music Producers Guild / UK Music -
<https://www.icann.org/en/system/files/correspondence/dipple-to-crocker-19may15-en.pdf>

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

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

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

7) While the DotMusic Application already addresses the purported concerns of the Letter, such as the inclusion of intellectual property safeguards (including copyright protection provisions); music-tailored policies¹⁶; and a governance board, after receipt of the Letter, DotMusic reached out to the at-large community to clarify certain points of misunderstanding. The Applicant endeavored to educate the at-large community regarding misinformation and inaccurate statements contained in the Letter. In addition to demonstrating how the original Application was already designed to address the “concerns” raised in the Letter, DotMusic filed Public Interest Commitments to clarify its position and identify areas in the Application that answered the issues of concern. DotMusic’s explanations and commitments to serving the community were sufficient to overturn these misconceptions and misunderstandings to bring new supporters (who are no longer associated with the Letter) to clarify their expressed withdrawal from the Letter.

8) An important misunderstanding contained in the Letter relates to “content regulation” by the Registry. First, it should be noted that the ICANN Registry Contract, does not require content regulation.¹⁷ Yet, the Letter “opposes” DotMusic because its author argues that DotMusic must

¹⁶ See .MUSIC Applicant Comparison matrix at <http://music.us/comparison.pdf>

¹⁷ <https://www.icann.org/news/blog/icann-is-not-the-internet-content-police>



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regulate content. An opposition point cannot be deducted based on a requirement that is not called for under the ICANN contract. While we understand the author's concern, it is curious that they did not complain about other .MUSIC competitors' open policies and singled out DotMusic. Had the author been truly concerned about these important issues they would have consistently filed opposition against the other competing applications as well. With respect to all other applications, the author of the Letter was silent. Therefore, the author's selective opposition and its misinformed nature demonstrates why the Letter should be considered as filed for the purpose of obstruction and anti-competitive. Despite this point, DotMusic remains the only applicant in the new gTLD program with provisions that will enforce copyright protection to protect the music community.¹⁸

10) Under the ICANN Registry Contract and in accordance with GAC advice, a Registry cannot be an exclusive access registry for a generic term allowing only certain affiliates or organizations to register domains under the string. In spite of these important requirements, the Letter supported the provision that eligibility should only be reserved to members of select music organizations. Not only is this position improper, it excludes a significant portion of the community that do not belong to member organizations (this position was also stated by EIU in its CPE determination for Far Further).

In response to the Letter, DotMusic notes that its Application has the same Eligibility policy as the competing applicant – eligibility for members that belong to Music Community Member Organizations (“MCMOs”) -- but it is only included in a priority-based phase to increase adoption and ensure established artists secure their domains without the fear of cybersquatting. Unlike the competing applicant, under DotMusic's Application, “Members” with requisite awareness of the community that do not belong to select member organizations are eligible to register domain names during General Availability. For consistency purposes, the EIU cannot punish DotMusic for refusing to exclude registrants (which would be discriminatory and inconsistent with the Nexus of the string and DotMusic's community definition).

According to ICANN's CPE Guidelines:

*To be taken into account as relevant opposition, such objections or comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives, or filed for the purpose of obstruction will not be considered relevant.*¹⁹

Accordingly, for the aforementioned reasons it is respectfully submitted that, to the extent the EIU is considering the Letter as opposition, it should be found that the letter is not relevant and also filed for obstructive and anti-competitive purposes.

¹⁸ See DotMusic Application, Question 20; Public Interest Commitments, Pg. 24-27; and <http://music.us/enhanced-safeguards>

¹⁹ ICANN CPE Guidelines, <http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>, Pg. 20



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DotMusic looks forward to being evaluated on the merits of its Application.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "J. Schaeffer", is written over a light blue horizontal line.

Jason Schaeffer
As Counsel On behalf of DotMusic Limited

Date: August 12, 2015